

EXHIBIT “2”

EXHIBIT

“2”



LIFE INVESTORS INSURANCE COMPANY OF AMERICA

P.O. Box 8063 * Little Rock, AR 72211-8063 * Telephone: (888) 763-7474

Inter-Company Correspondence

FROM: Connie Whitlock

TO: Deborah C. Alexander
James Byrne

DATE: July 22, 2005

SUBJECT: Supplemental Cancer Policies – Claims Issues

Introduction and Background

As you know, we have been examining the issue of whether we are collecting the necessary information to pay claims accurately under certain supplemental cancer insurance policies issued by Life Investors Insurance Company of America and Transamerica Life Insurance Company (or predecessor companies) that provide benefits based upon the "actual charges" for certain medical services. For example, a common provision under these policies provides for benefits equal to the "actual charges" for chemotherapy and radiation therapy treatments. After careful review, we have determined that the company has been paying claims in excess of the actual charges. This situation has developed primarily because in many cases we have been basing the benefit payments upon statements from healthcare providers which cannot be relied upon to reflect the actual charges for the services rendered. Instead, these statements provide "list" prices or theoretical standard rates which are not the actual charges being paid and accepted by the provider. In these cases, we have been paying more in benefits than provided for under the terms of the policies.

The two most significant examples arise in situations where the insured is covered by Medicare or some type of group health insurance plan. In these situations, the insured's medical expenses are fully covered, and the actual charges for services like radiation and chemotherapy are being paid by Medicare or by the group health insurer. As a reminder, even though the medical expenses have been paid or will be paid by Medicare or the group health insurer, our supplemental cancer policies pay additional monies directly to the insured which the insured can use for any purpose.

In these situations, the medical providers will often send informational statements to the insured which provide list prices for the medical services provided. These statements are not "bills" and they do not reflect incurred losses or expenses. No one is actually paying the amounts set forth on these statements. These types of informational statements do not reflect the actual charges being incurred and paid. The actual charges being paid to and accepted by the medical provider can be significantly less than the amounts listed on these informational statements.

LIICA01032

Actions Needed

In order to benefit all of the policyholders by reducing the amount of future rate increases, the company has decided that we need to make the necessary changes in our claims process to ensure that we are indeed paying the "actual charges" consistent with the terms of the supplemental cancer policies. This will include updating our claim forms and ensuring that we collect the necessary proof of loss showing the true actual charges being incurred and paid in all cases. Because there are currently policyholders who are utilizing the existing claim forms, we will send them notice explaining the change. We have also decided to provide notice to all of the other cancer insurance policyholders as well, explaining how claims will be paid in the future.

We would like to implement the above changes as soon as reasonably possible after all of the various departments and systems are ready and in place.

Project Team

In order to accomplish the necessary changes in our claims process, we need to form a project team, appoint a project manager, and plan the operational and systems changes necessary to efficiently implement the change. I will be naming a project manager shortly, and we will be forming a project team in the near future consisting of personnel from both Little Rock and Louisville. I would like both of you to serve on the project team.

Some of the tasks and implementation issues that will need to be addressed by the project team include the following:

- communications (e.g., to policyholders, agents, and employees)
- system requirements and changes
- form changes, including claim forms
- products affected
- claims processing changes
- training

The project team will need to develop and refine the details in each of these areas.

Let's plan on speaking in the near future to discuss moving forward with these changes to pay claims accurately. If you have any questions or suggestions in the meantime, please feel free to give me a call. Thank you.

cc: Neva Curtis

EXHIBIT “3”

EXHIBIT

“3”

FREEDOM COURT REPORTING

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1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE MIDDLE DISTRICT OF TENNESSEE
 3 COLUMBIA DIVISION

4
 5 ANTHONY E. GOOCH,)
 Plaintiff,)
 6 vs.) CASE NO.
) 1:07-0016
 7 LIFE INVESTORS INSURANCE COMPANY OF)
 AMERICA, et al.,)
 8)
 Defendants.)
 9)
 10)
 11)
 12 VIDEOTAPED DEPOSITION OF
 13 ANTHONY E. GOOCH
 14 Taken on Behalf of the Plaintiff
 15 June 13, 2007
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 I N D E X
 2 WITNESS: ANTHONY E. GOOCH
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1 APPEARANCES:
 2 For the Plaintiff:
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 tsinclair@cwp-law.com

6
 7 For the Defendants:
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 Miami, Florida 33131-2803
 10 305.371.2600
 mlj@jordenua.com
 11
 12 GERALD LAX
 Inhouse Counsel AEGON USA
 13

Also Present: Robert Jongema, Videographer

1
 2 The videotaped deposition of
 3 ANTHONY E. GOOCH, taken on behalf of the
 4 Plaintiff, on the 13th day of June, 2007, in the
 5 conference room of the Spring Hill Best Western,
 6 104 Kedron Parkway, Spring Hill, Tennessee, for
 7 all purposes under the Federal Rules of Civil
 8 Procedure.

9 The formalities as to notice,
 10 caption, certificate, et cetera, are waived. All
 11 objections, except as to the form of the
 12 questions, are reserved to the hearing.

13 It is agreed that Elisabeth A.
 14 Miller, being a Notary Public and Court Reporter
 15 for the State of Tennessee, may swear the witness,
 16 and that the reading and signing of the completed
 17 deposition by the witness are reserved.

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1 (Pages 1 to 4)

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FREEDOM COURT REPORTING

<p style="text-align: right;">Page 5</p> <p>1 P R O C E E D I N G S</p> <p>2 THE VIDEOGRAPHER: This begins</p> <p>3 Tape No. 1 in the deposition of Anthony Gooch in</p> <p>4 the matter of Anthony E. Gooch versus</p> <p>5 Life Investors Insurance Company of America,</p> <p>6 et al.; Case No. 1:07-0016; in the Court of the</p> <p>7 United States District Court for the</p> <p>8 Middle Tennessee -- Middle District of Tennessee,</p> <p>9 Columbia division.</p> <p>10 We are on the record at 9:01 a.m. on</p> <p>11 Wednesday, 13 June, 2007.</p> <p>12 This deposition is taking place at</p> <p>13 104 Kedron Parkway, Spring Hill, Tennessee.</p> <p>14 My name is Robert Jongema</p> <p>15 representing Freedom Court Reporting.</p> <p>16 Would counsel identify yourselves and</p> <p>17 state whom you represent.</p> <p>18 MR. SINCLAIR: Tom Sinclair on behalf</p> <p>19 of the plaintiffs.</p> <p>20 MR. LEVENTHAL: Markham Leventhal</p> <p>21 from Jorden Burt, LLP, on behalf of the</p> <p>22 defendants.</p> <p>23 MR. LAX: Gerald Lax, I'm in-house</p> <p>24 counsel for the defendants.</p> <p>25 THE VIDEOGRAPHER: Would the court</p>	<p style="text-align: right;">Page 7</p> <p>1 let us know.</p> <p>2 A. I certainly will.</p> <p>3 Q. We're aware of your medical condition, and</p> <p>4 we're going to do what we can to minimize the</p> <p>5 impact this has on you.</p> <p>6 Let me ask you first off, I saw that you</p> <p>7 brought something folded up there with you. Can I</p> <p>8 take a look at that, please?</p> <p>9 A. Certainly.</p> <p>10 MR. SINCLAIR: I'm going to go ahead</p> <p>11 and mark the notice of video deposition as</p> <p>12 Exhibit 1.</p> <p>13 (Marked Exhibit No. 1.)</p> <p>14 BY MR. SINCLAIR:</p> <p>15 Q. And I believe that's the same one we</p> <p>16 provided to the defendants. You received that</p> <p>17 from my office; is that correct?</p> <p>18 A. Yes, sir, I did.</p> <p>19 Q. You understand what we're here for today,</p> <p>20 don't you?</p> <p>21 A. Yes, sir, I do.</p> <p>22 Q. Okay. Let me begin, if I can, by asking</p> <p>23 you for your address. Where do you live?</p> <p>24 A. It's 18493 Sewell Road. It's in Athens,</p> <p>25 Alabama.</p>
<p style="text-align: right;">Page 6</p> <p>1 reporter please swear the witness.</p> <p>2 ANTHONY E. GOOCH,</p> <p>3 was called as a witness, and after having been</p> <p>4 first duly sworn, testified as follows:</p> <p>5 E X A M I N A T I O N</p> <p>6 BY MR. SINCLAIR:</p> <p>7 Q. Good morning.</p> <p>8 A. Good morning.</p> <p>9 Q. Would you please state your name for the</p> <p>10 record.</p> <p>11 A. Anthony E. Gooch.</p> <p>12 Q. What's the middle initial?</p> <p>13 A. Eugene.</p> <p>14 Q. Eugene? Anthony Eugene Gooch. Have you</p> <p>15 ever gone by any other name?</p> <p>16 A. Most everyone that I know -- all my</p> <p>17 friends call me Tony.</p> <p>18 Q. Tony? Okay. Do you mind if I call you</p> <p>19 Tony?</p> <p>20 A. Not at all.</p> <p>21 Q. Okay. Tony, I want to ask you some</p> <p>22 questions. We're here to preserve your testimony,</p> <p>23 and I want to ask some questions of you. I would</p> <p>24 ask that if you get tired or feel a need to take a</p> <p>25 break, whether it's me or the defense counsel, you</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. You know, one of the first questions I</p> <p>2 have for you is -- is related to the mask you're</p> <p>3 wearing.</p> <p>4 A. Yeah.</p> <p>5 Q. You know, there's a possibility we may</p> <p>6 play this tape for the jury at some point. Please</p> <p>7 tell the jury, if you would, why it is you're</p> <p>8 wearing a mask.</p> <p>9 A. I am currently neutropenic, which is a</p> <p>10 medical term indicating that my white blood cells</p> <p>11 are very low. I have recently taken shots to</p> <p>12 increase this. And if I'm exposed to anyone who</p> <p>13 has had a severe cold or anything like that that I</p> <p>14 could be affected by the bacteria, it would put me</p> <p>15 in a very serious condition.</p> <p>16 Q. As a matter of fact, has that recently</p> <p>17 happened in the last couple of weeks?</p> <p>18 A. Yes, it has. I was hospitalized a couple</p> <p>19 weeks ago for about five days. I had received an</p> <p>20 infection from eating raw fruits and vegetables,</p> <p>21 they believe. Temperature was excess of 103, and</p> <p>22 I was, say, hospitalized and getting a lot of</p> <p>23 antibiotics and so forth.</p> <p>24 Q. Let me ask you -- let me step back, if I</p> <p>25 can, for a moment and ask you, do you recall</p>

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<p>1 purchasing an insurance policy, a cancer policy, I 2 should say, from the defendants in this case?</p> <p>3 A. Yes, sir, I do.</p> <p>4 Q. Do you recall about what time that 5 happened?</p> <p>6 A. Year-wise, it was like, I believe, 1997. 7 It could have been as early as '96, but I do 8 believe it was around '97, 1997.</p> <p>9 Q. Okay. And did you maintain records 10 regarding the purchase of this policy?</p> <p>11 A. Yes, I did.</p> <p>12 Q. Okay. I'm going to go ahead and show you 13 what has been produced to the defendants and Bates 14 numbered GOOCH 0001 through 810 and ask you to 15 take a look at these, if I can, please, and see if 16 you have seen these documents before?</p> <p>17 A. Yes, sir. As a matter of fact, the top 18 one has my handwriting on it indicating how much 19 the policy was going to cost me and so forth.</p> <p>20 Q. Just take a moment, and my question to you 21 is this, is the documents before you Bates 22 numbered 1 through 810 your documents that you 23 maintained in your files at your home?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Okay. You've reviewed those before you</p>	<p>1 those as Exhibit 2 then. 2 (Marked Exhibit No. 2.)</p> <p>3 MR. SINCLAIR: There's a documents 4 produced summary. Would you like that excluded 5 from the production set we are going to mark here?</p> <p>6 MR. LEVENTHAL: You can mark that 7 with it.</p> <p>8 MR. SINCLAIR: Okay.</p> <p>9 BY MR. SINCLAIR:</p> <p>10 Q. All right. Mr. Gooch, let's step back to 11 that time period when you purchased the policy at 12 issue -- first off, if you would, take a look 13 again at the documents labeled as Exhibit 2 here. 14 Have those in front of you, if you can. If you 15 would, turn in those set of documents to the 16 policy at issue in this case.</p> <p>17 A. I believe this is the -- I believe this is 18 a copy of the policy. I believe it is a copy of 19 the original -- yes, I am -- I'm -- I'm sure it's 20 a copy of the original because it has my 21 handwriting on it.</p> <p>22 Q. Okay. If I can, let's go ahead -- is it 23 your understanding the defendants have claimed 24 that you didn't receive the policy in Tennessee? 25 Are you aware of that?</p>
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<p>1 came in here today, correct?</p> <p>2 A. Yes, sir, I did.</p> <p>3 MR. SINCLAIR: Okay. Without 4 objection, I would like to consider those 5 submitted as Mr. Gooch's records and offer them 6 into evidence.</p> <p>7 MR. LEVENTHAL: You can mark them as 8 an exhibit. I'm not sure that we're going to 9 agree that that entire stack of 800 pages is 10 admissible, but that's fine with me.</p> <p>11 MR. SINCLAIR: Okay. Well, my 12 concern is if he -- if he is the foundation for 13 admission and we're preserving his testimony 14 without the usual stipulations, offering that into 15 evidence at this point would be the only 16 opportunity we would have.</p> <p>17 MR. LEVENTHAL: If he is testifying 18 those are his records he kept at home, we'll -- 19 we'll agree to admission.</p> <p>20 MR. SINCLAIR: Okay. All right. And 21 I don't see any reason to attach them to this 22 transcript, unless you would like to.</p> <p>23 MR. LEVENTHAL: Yes, we would like 24 to.</p> <p>25 MR. SINCLAIR: Okay. We'll mark</p>	<p>1 A. Yes, sir, I am aware of that.</p> <p>2 Q. Okay. Did you originally the first time 3 you received this policy receive it while you were 4 standing within the state of Tennessee?</p> <p>5 A. Yes, sir, I did.</p> <p>6 Q. Okay. The defendants have pointed in 7 their production set and in their motions to -- 8 and I'm going to point to this for you -- what's 9 been part of Exhibit 2 labeled GOOCH 36. Do you 10 see that?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Do you see how it's stamped duplicate 13 here?</p> <p>14 A. Yes, sir, I do.</p> <p>15 Q. Okay. And when you had indicated earlier 16 that you had found this policy, you weren't 17 pointing to GOOCH 36, were you?</p> <p>18 A. No, I was not.</p> <p>19 Q. Okay. Point to the particular document 20 that you were pointing to in this production set 21 that you said was the original policy that you 22 received in Tennessee.</p> <p>23 A. This would be the original here.</p> <p>24 Q. Okay. Well, you're pointing to GOOCH 3, 25 which is actually a letter. Point to the</p>

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<p>1 particular page and tell us by Bates number, if 2 you would, where that original policy begins. 3 A. I believe it would begin at this point 4 here. 5 Q. Okay. That's GOOCH 9. 6 Now, if I can direct your attention down 7 to the bottom of GOOCH 36, do you see that word 8 that's stamped there? 9 A. Yes, sir. 10 Q. What does that say? 11 A. Duplicate. 12 Q. Is there a similar stamp over here on 13 GOOCH 9? 14 A. No, sir, there is not. 15 Q. Okay. And is it your testimony that 16 GOOCH 9, that document is the beginning of the 17 original policy? 18 A. Yes, sir, it is. 19 Q. Okay. Let me put these back in order so I 20 don't get in trouble. 21 Let's step back, if we can, to the 1996-97 22 time period when you first purchased this policy. 23 Tell me how that was set up. Who -- who 24 approached you? Did you go to an insurance agent, 25 or did one come to you?</p>	<p>1 Pontiac/Olds/Buick dealership. 2 Q. What were you doing there? 3 A. I'm an automotive technician, mechanic. 4 Q. Mechanic? Okay. Have you been a mechanic 5 all your life? 6 A. Yes, sir, since I was 16 years old. 7 Q. Okay. Were you a mechanic in the service? 8 A. No. I just had been around cars all my 9 life, and it was just a natural progression. My 10 father had worked on cars throughout most of his 11 life, and it just kind of fell to me. That's what 12 I wanted to do, and that's what I continued doing. 13 Q. Okay. You actually were telling me before 14 this deposition began that you did something on 15 the side that was related to being a mechanic? 16 A. Yes. I drag raced semipro for 13 years 17 and built engines and built cars as well. 18 Q. Okay. 19 A. So that all kind of fell into the -- the 20 same situation. 21 Q. Well -- and I'm sorry, it's interesting to 22 me. I'm -- I'm interested stepping back to 1997. 23 How often -- or how many times did this -- do you 24 recall the agent's name? 25 A. I believe it was Jerry. I can't be 100</p>
Page 14	Page 16
<p>1 A. Actually, he came to my employment. I was 2 working at an automotive dealership. He came in 3 there, and we discussed the policy. I had been 4 interested in getting a cancer policy to not only 5 protect myself in the future should I get cancer 6 but to protect my family as well. 7 Q. Well, first off, let me ask you, why were 8 you, in your words, interested in getting a cancer 9 policy? 10 A. My father died in 1963 of cancer, and I 11 saw what my father went through. And it 12 devastated not only himself, but financially it 13 really caused him serious problems. And I had 14 hoped if I should ever get cancer, never expected 15 to, but if I did to have something that would 16 cover for me and take care of me and my family 17 should I -- ever needed it. 18 Q. Was the first time that you actually were 19 in contact with the agent, was that when he came 20 to you? 21 A. Yes, sir. 22 Q. Okay. Did he just come one time to meet 23 you in Pulas- -- well, first off, what dealership 24 was it you were working at? 25 A. I was working at Elliott Popham</p>	<p>1 percent sure, but I believe it was Jerry, and the 2 last name is -- I just can't remember that, but I 3 do believe it was Jerry. 4 Q. Let me direct your attention, if I can, to 5 part of Exhibit 2, which is GOOCH 33, and direct 6 your attention down to the bottom here. Can you 7 see that handwriting there? 8 A. Yes. 9 Q. Do you recognize either one of those 10 names? 11 A. I believe this one is Jerry; the other one 12 I'm not real familiar with. But the -- the 13 gentleman, Jerry, I had met him a few times, and 14 even prior to and following the policy, I had met 15 him several times. And he was a customer as well, 16 so -- 17 Q. Okay. Did he -- did he tell you who he 18 was representing that day? 19 A. Yes, I believe -- and I want to say it was 20 Life Investors. If I remember correctly, that was 21 the original policy. 22 Q. Okay. Did he just hand you a policy that 23 first meeting, or were there subsequent meetings 24 where you discussed this? 25 A. Yes, we did discuss it. I was very</p>

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<p style="text-align: right;">Page 17</p> <p>1 interested. He went over the policy the very 2 first time we talked. And it seemed very good to 3 me with the coverage and what they were going to 4 pay and how they would pay it. And, again, God 5 forbid if I ever got cancer, you -- I guess we all 6 want to go through life being healthy.</p> <p>7 But he did explain it into quite a bit of 8 details, and I was very -- very pleased with it, 9 and -- because of the price, the price was very 10 nominal. It was something I could afford, and it 11 was something that I felt that I would probably 12 need.</p> <p>13 Q. I want to know some specifics, if we can, 14 about that first meeting. You said he went over a 15 policy. Did he bring a policy with him?</p> <p>16 A. Yeah, he brought a -- and I -- I don't 17 completely recall if it was a policy. But he had 18 papers with him that explained what they would 19 pay, how they would pay it, and a lot of the stuff 20 that they -- the items that they covered.</p> <p>21 Q. Okay. If you can, tell me in as much 22 detail as possible what it is he told you about 23 the items they would pay.</p> <p>24 A. They -- at that point, he explained to me 25 that chemotherapy would be paid at 100 percent,</p>	<p style="text-align: right;">Page 19</p> <p>1 go ahead.</p> <p>2 MR. SINCLAIR: On the grounds of 3 relevancy?</p> <p>4 MR. LEVENTHAL: Grounds of hearsay, 5 grounds of -- not on grounds of relevancy.</p> <p>6 MR. SINCLAIR: Okay.</p> <p>7 BY MR. SINCLAIR:</p> <p>8 Q. Now, stepping back again to that first 9 meeting, do you recall the exact date this took 10 place?</p> <p>11 A. Not exactly. According to this, I can see 12 here it was November 24 when I signed this, and it 13 was prior to that we had discussed it, I believe.</p> <p>14 Q. Okay. Did you fill out an application 15 that first time that he sat down with you?</p> <p>16 A. I do believe I did.</p> <p>17 Q. And did you hand him a check that first 18 time that he sat down with you?</p> <p>19 A. If I recall correctly, I believe I did.</p> <p>20 Q. And have you told us everything that he 21 told you, this Jerry told you, at that first 22 meeting?</p> <p>23 A. To the best of my recollection, yes, sir.</p> <p>24 Q. Okay. When was the next meeting you had 25 regarding this policy?</p>
<p style="text-align: right;">Page 18</p> <p>1 and that there were some other thing -- I believe 2 if you were hospitalized it was \$100 per day if it 3 was related to your cancer. There were other 4 items in there that had limited amounts that -- 5 the maximum amount that they would pay for certain 6 things such as a transplant or other things of 7 that nature.</p> <p>8 But the thing I liked the most was it paid 9 100 percent on chemotherapy.</p> <p>10 Q. When you say 100 percent, 100 percent of 11 what?</p> <p>12 A. Of what the doctors would charge. He said 13 he -- what you do is get your statements from the 14 doctor and you just file all of that. And 15 whatever their charges are, that's what will be 16 paid.</p> <p>17 Q. Now, these were -- these were something 18 that you recall him saying in that first meeting?</p> <p>19 A. Yes.</p> <p>20 Q. Okay.</p> <p>21 A. He said -- and he specifically stated they 22 would pay 100 percent of the charges, and that was 23 a really -- to me that was a very good deal.</p> <p>24 MR. LEVENTHAL: Objection to all the 25 line of questioning about what the agent said, but</p>	<p style="text-align: right;">Page 20</p> <p>1 A. There was a short time later of -- there 2 was -- a lady came in to do kind of a basic, I 3 guess, exam. She did basic blood pressure, things 4 of that nature. I answered several questions for 5 her regarding family history and my medical 6 history, just basic type questions.</p> <p>7 Q. Okay.</p> <p>8 A. And Jerry did come back at a later date 9 and brought me all -- brought me the policy and 10 everything else. And I -- I remember that because 11 the original policy has greasy fingerprints on it.</p> <p>12 My wife is a neat freak, so she got after 13 me about getting fingerprints on it.</p> <p>14 And we had subsequently lost or misplaced 15 the original.</p> <p>16 Q. And did you ask for a replacement at that 17 point?</p> <p>18 A. Yes, sir, we did. When I was diagnosed 19 with cancer, I did not realize I had misplaced the 20 policy. When I was diagnosed with cancer, then we 21 requested a duplicate so that we would have it in 22 our hands so we would know what we -- would be 23 covered.</p> <p>24 Q. And where did you receive that duplicate?</p> <p>25 A. The duplicate was mailed to my home in</p>

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<p style="text-align: right;">Page 21</p> <p>1 Alabama. 2 Q. Okay. Well, stepping back to 1997 now, 3 are you certain as you sit here today under oath 4 that you received the original policy while you 5 were standing in Pulaski, Tennessee? 6 A. Yes, sir, 100 percent certain of that. 7 Q. Okay. And the greasy fingerprints? 8 A. Yeah, that was -- any time I brought 9 paperwork home, it always had greasy fingerprints 10 on it. 11 Q. Okay. Let me -- let me step back for a 12 minute, if I can, to the mask. 13 It -- it's difficult for the jury to see 14 you behind that mask. 15 A. Yes. 16 Q. I want them to try to understand, if they 17 can, what you're going through right now. So let 18 me ask you, first off, did your doctor say it was 19 okay for you to be here today? 20 A. Yes, he did. He said the only problem I 21 could have is exposure if anyone has -- currently 22 has or has recently had a severe cold or an 23 infection. 24 Q. Or been around kids with colds? 25 A. Right. Anyone -- any way -- anything like</p>	<p style="text-align: right;">Page 23</p> <p>1 BY MR. SINCLAIR: 2 Q. That's up to you. Listen -- 3 A. I would like to remove it as long as I'm 4 okay. And I don't think -- I don't see any real 5 problem. I don't -- 6 MR. LAX: That's up to you. 7 BY MR. SINCLAIR: 8 Q. Okay. 9 A. I would because, like I say, it -- it 10 muffles my voice for one thing, and it's just 11 uncomfortable. 12 Q. Okay. 13 A. One of those things I have to endure. 14 Q. All right. Let me ask you, did your 15 doctor help you prepare for today's testimony? 16 A. Yes, they have postponed my chemo because 17 of my weakness, was the main reason. But being 18 neutropenic, I received a shot -- what's today, 19 Tuesday, Wednesday? I received a shot Monday 20 evening of Neupogen, which increases my white 21 blood cell counts, gives me bone pain and joint 22 aches, but brings my white cell counts up to a 23 level where I'm okay. 24 Q. You know, you say it brings your white 25 cell level counts up. And I'm not sure -- I don't</p>
<p style="text-align: right;">Page 22</p> <p>1 that could transfer to me. He said as long as 2 that has not happened, you can go without the 3 mask. I frequently am out in crowds, and a lot of 4 times I have to wear the mask to be on the safe 5 side. 6 Q. Okay. 7 A. I don't like it, but -- 8 Q. I haven't been exposed. I don't know 9 about the rest of these people. I think some of 10 them have been on airplanes, so you do what you 11 think's best and your doctor told you. Okay? 12 I'll leave that up to you. 13 A. I would like to remove the mask because it 14 is uncomfortable. And as long as everyone -- and 15 I think everyone seems to be healthy, so . . . 16 Q. Has anybody been exposed to any colds, 17 children with colds, been around a cold, had a 18 cold recently? 19 MR. LAX: I had a cold two weeks ago, 20 so -- and I'm recovering from one, so I -- I'm 21 okay now, but you can tell, I'm still nasal, so I 22 want to caution you. 23 THE WITNESS: It probably would be 24 okay. 25</p>	<p style="text-align: right;">Page 24</p> <p>1 understand really, and the jury might not. Does 2 that mean you have more energy, or does that mean 3 you're just less of a risk to exposure or -- 4 A. Actually both. It brings my energy level 5 up. My white cells Monday were 2.1. 4 to 6 is 6 normal. Any time you get below 4, you're 7 susceptible to infections. And the Neupogen will 8 increase that and bring it up to about 6 or 7, 9 which helps my immune system, helps me to fight 10 infections and fight off bacteria that could 11 affect me. Simple bacteria could be fatal to me 12 in some cases. 13 Q. I want to make sure that the court and the 14 jury understand your doctor's instructions with 15 regard to your ability to participate here today. 16 Is there any risk we're running of having you 17 become sick by spending a great deal of time here 18 today? 19 A. Probably not, but -- hopefully my counts 20 are up today. I'm sure they are because I'm 21 feeling a little -- a little more energetic today 22 than I normally feel. And this is the way -- the 23 white cells coming up tends to help me feel a 24 little better. 25 Q. Okay. You -- you need to let us know, all</p>

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<p>1 of us, if it's -- if it's time to take a break or 2 if you need some rest. Okay? 3 A. I certainly will. The one main thing is, 4 I only have one kidney functioning now, so 5 periodically I have to use the restroom a little 6 more frequently than average, so . . . 7 Q. We call that a Rule 101 break. You just 8 call it any time you want. Okay? 9 A. I certainly will. 10 Q. I -- you know, I guess we ought to go 11 ahead and finish the discussion about being in 12 Pulaski when you purchased this. Have you told us 13 of all the conversations you had with the agent, 14 Jerry, in relation to your purchase of this 15 policy? 16 A. To the best of my recollection, yes, sir. 17 Q. Okay. Let's talk, if we can, a little bit 18 about your diagnosis. Okay? 19 A. Okay. 20 Q. When were you first diagnosed with cancer, 21 and what type of cancer is it? 22 A. My first official diagnosis was in October 23 of '99. I had non-Hodgkin's lymphoma, large cell 24 and small cell at the same time. One is very fast 25 moving; one is very slow moving.</p>	<p>1 layman. Cancer is cancer. 2 Q. It's the big C? 3 A. Yeah. It's -- it's -- I call it a dragon 4 because it's always biting at you. And sometimes 5 it gets big bites; sometimes it gets little bites. 6 Q. Okay. Let's -- let's walk through, if we 7 can, the dragon that you've dealt with. Okay? 8 A. Certainly. 9 Q. We started in Lawrenceburg, Tennessee, 10 with the doctor saying you had cancer of the 11 spine. You said that that was corrected in 12 Huntsville. Where was particularly the tumors 13 that they found in Huntsville in your body? Where 14 in your body were they? 15 A. The very first tumor was found in my upper 16 abdomen. It was the size of a medium-sized 17 grapefruit. And it was attached to the aorta in 18 my heart, and that's why it was not operable. 19 Q. It was attached to the aorta in your 20 heart? 21 A. Yes. And that's -- the doctor said there 22 was no possibility of surgery. It would expose me 23 to too much risk, and at that point, we began 24 doing chemotherapy. 25 Q. When you were first told that you -- you</p>
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<p>1 Q. And that was -- do you recall when in '99 2 that was that you were diagnosed and -- 3 A. I want to say it was October -- either 4 late -- probably late October. And then shortly 5 thereafter, I began my chemo treatments. 6 Q. Who diagnosed you? Who was the first 7 physician? 8 A. The very first physician was a workman's 9 comp doctor from Lawrenceburg, Tennessee, and it 10 was a misdiagnosis. He stated I had cancer of the 11 spine, which the doctors were looking for cancer 12 of the spine, and they couldn't find it. 13 They then subsequently sent me to Dr. Mahn 14 Dang in Huntsville at the Center for Cancer Care, 15 and he did several studies, and they ended up 16 doing surgery and took a biopsy of the tumor that 17 was in my abdomen, upper abdomen, and the tests 18 came back as positives, cancer. 19 So they knew very quickly as soon as they 20 had done the biopsy -- I was still in recovery 21 when they told my wife. 22 Q. And -- you know, you said non-Hodgkin's. 23 I've -- do you understand the difference between 24 Hodgkin's and non-Hodgkin's lymphoma? 25 A. Not really. I guess I'm like a lot of</p>	<p>1 had cancer of the spine or the aorta -- the tumor 2 was on the aorta, were they -- did they tell you 3 what your prognosis was? 4 MR. LEVENTHAL: I'm going to state a 5 continuing objection on the record as to the 6 relevancy of his medical conditions with respect 7 to this case. But of course, we have objections 8 to the relevancy of this entire deposition. But 9 you can continue. 10 MR. SINCLAIR: I'm sorry, you have a 11 running objection as to the relevancy of the 12 entire deposition? 13 MR. LEVENTHAL: Correct. 14 MR. SINCLAIR: I'm not sure I can 15 address relevancy questions in a running fashion. 16 MR. LEVENTHAL: Well, I mean, that's 17 fine. I think it's the same issue that we 18 discussed in court, that the issues before the 19 court are legal in nature, and extrinsic evidence 20 is not relevant. So that's all I mean by that. 21 MR. SINCLAIR: Okay. I'm sorry. I 22 do understand that. 23 BY MR. SINCLAIR: 24 Q. All right. Did they tell you what your 25 prognosis was there in 1999?</p>

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<p style="text-align: right;">Page 29</p> <p>1 A. Yes, they said I had a very high 2 percentage of successful treatment. 3 Q. And were they ultimately successful in 4 treating those tumors? 5 A. In -- those particular tumors, yes. 6 Q. Okay. All right. Now, that wasn't the 7 last time you fought with a tumor, was it? 8 A. Correct. 9 Q. Okay. I need you, if you can, to run me 10 through where you've had tumors in your body. Can 11 you tell us that? 12 A. I certainly can. I remember every one of 13 them, something that you -- you never forget. 14 During the end of the treatment for my 15 large cell and small cell non-Hodgkin's lymphoma, 16 they discovered I had involvement -- cancer 17 involvement in my bone marrow. I was then sent to 18 Vanderbilt Hospital -- 19 Q. Is that here in Tennessee? 20 A. Yes, sir, it's in Nashville. And at that 21 point, I was accepted into the transplant program 22 to do an autologous stem cell transplant, and that 23 means I donated my own cells. 24 Q. Okay. 25 A. Which eliminated the possibility of me</p>	<p style="text-align: right;">Page 31</p> <p>1 Q. Did you have -- did you have medical 2 coverage at that point? 3 A. Yes, I did. 4 Q. Who did you have medical coverage with? 5 A. It was through BlueCross -- I want to say 6 it was from where I worked and as well as I was 7 covered with my wife's policy at the same time 8 where she was employed as well. 9 Q. Did you -- did you have to send the 10 defendants any EOBs or explanation of benefit 11 forms from BlueCross to receive benefits? 12 A. No, sir. 13 Q. And did they pay you the actual charges on 14 the doctors' bills that you sent them? 15 A. Yes. 16 MR. LEVENTHAL: Object to the form. 17 Go ahead. 18 BY MR. SINCLAIR: 19 Q. When you sent them the doctors' bills, did 20 they pay the amount stated on the doctors' bill? 21 A. Yes, they did. 22 Q. Any problem with them up until the second 23 set of tumors showed up? 24 A. No, no problem. Normally we would file 25 the statements from the doctor, and within two to</p>
<p style="text-align: right;">Page 30</p> <p>1 running into a problem getting cells from someone 2 else and having to take antirejection drugs. 3 Subsequently they removed me from the 4 program because they felt that it would not be 5 successful. 6 Q. What -- I'm sorry. What do you mean they 7 removed you from the program at Vanderbilt -- is 8 this -- are we still at Vanderbilt? 9 A. Yes. 10 Q. And when was this? 11 A. I want to say it was in, like, May of -- 12 April/May of 2001. 13 Q. Okay. That was the next set of -- of -- 14 that was the next set of lesions or -- or tumors 15 that you had? 16 A. That's correct. 17 Q. Okay. So the tumors in '99 were resolved 18 through chemo? 19 A. That's correct. 20 Q. All right. Well, let me ask you, did you 21 file a claim with the defendants at that point? 22 A. Yes, we did. 23 Q. And did you have any problems with them 24 paying? 25 A. None whatsoever.</p>	<p style="text-align: right;">Page 32</p> <p>1 three weeks, I would get a check. 2 Q. In May of 2001, you indicated that -- I 3 believe you said that your doctors told you your 4 bone marrow was involved? 5 A. It was actually earlier in the spring, and 6 they had set me up at Vanderbilt, and it was April 7 or May that I went up there. At that point, I 8 received another port in my right chest, which was 9 an open port. 10 Q. What -- what is a port? 11 A. A port is an access point. I have one in 12 my left chest now. It's an access point where 13 they don't have to stick you in the arm or the 14 back of your hand. They can take the needle and 15 stick it right into the port, and you can receive 16 your chemo; they can do your blood analysis, 17 various things so that they don't have to go back 18 sticking you in the arm and -- 19 Q. You're talking about a port just like on a 20 computer? 21 A. Pretty much, yeah. 22 Q. Okay. 23 A. They use a very small fishhook looking 24 needle that just snaps into the -- into the port. 25 Now, the one that I had at that time -- I had the</p>

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<p style="text-align: right;">Page 33</p> <p>1 one in the left, but the one they put in at 2 Vanderbilt was three open hoses that came out of 3 my chest and hung down about four to five inches 4 onto my chest, so there were three actual open 5 hoses there.</p> <p>6 Q. This was in May of 2001. Now, you gotten 7 me to the point where you had said Vandy said that 8 they were going to kick you out of the study. 9 A. That's correct.</p> <p>10 Q. Why were they going to do that? 11 A. They did not feel that it would be 12 successful. They felt that at that point even if 13 they gave me the transplant that I wouldn't live 14 anyway.</p> <p>15 Q. Did -- 16 A. And --</p> <p>17 Q. I'm sorry. What do you mean you wouldn't 18 live anyway? Did someone tell you you were 19 terminal at that point? 20 A. At that point, they didn't bring it up to 21 me. They did tell my doctor that they felt they 22 couldn't help me, that I was probably going to be 23 terminal, and they would not put me into the 24 program. Dr. Dang wrote several letters.</p> <p>25 Q. Who is Dr. Dang?</p>	<p style="text-align: right;">Page 35</p> <p>1 happy we did. 2 MR. LEVENTHAL: I'm going to state an 3 objection for the record based on hearsay grounds 4 as to what other doctors told him or told other 5 doctors.</p> <p>6 MR. SINCLAIR: Okay. 7 BY MR. SINCLAIR: 8 Q. Did Dr. Dang tell you that he had called 9 and asked them to remove -- or put you back in the 10 study? 11 A. Yes, he did. 12 Q. Okay. Did they ultimately put you back in 13 the study? 14 A. Yes, sir, they did. 15 Q. Okay. Let me ask you, was the stem cell 16 transplant successful? 17 A. Yes, sir, it was. I spent 29 days in 18 isolation, had my transplant. I spent 7 days with 19 no white cells. The family had been told I might 20 not make it through the night. I did. And 21 Dr. Stein subsequently and to this day calls me 22 the miracle guy. He said, you weren't supposed to 23 live, and everything worked perfect. 24 And at this point, I just recently had my 25 five-year checkup, and I have no living cancer</p>
<p style="text-align: right;">Page 34</p> <p>1 A. Dr. Mahn Dang is my oncologist in 2 Huntsville and --</p> <p>3 Q. Would you -- would you for the court 4 reporter please spell his name? 5 A. His first name is M-A-H-N, and his last 6 name is D-A-N-G.</p> <p>7 Q. Now, is he Vietnamese or -- 8 A. He is Vietnamese. And in my personal 9 opinion -- I know this doesn't mean a lot to other 10 folks, he saved my life, and he's a wonderful, 11 wonderful man.</p> <p>12 Q. And you're a Vietnam vet, aren't you? 13 A. I was not in Vietnam, no, sir.</p> <p>14 Q. Okay. But you were a veteran during 15 Vietnam? 16 A. Afterwards, yes.</p> <p>17 Q. Okay. Dr. Dang called Vandy? 18 A. Yes, he wrote several letters to 19 Dr. Stein, who's chief of hematology, and it was 20 his ultimate decision. I was not aware of this 21 until later on when Dr. Stein told me I should 22 thank Dr. Dang because they had removed me from 23 the program because they couldn't help me. He 24 said Dr. Dang literally begged me. He said, we 25 did put you back in the program, and we're so very</p>	<p style="text-align: right;">Page 36</p> <p>1 cells in my bone marrow whatsoever. 2 Q. But you have them elsewhere? 3 A. Oh, yes. 4 Q. But they chased them out of your bone 5 marrow? 6 A. They got -- they got rid of the bone 7 marrow. 8 Q. Dr. Stein refers to you as what? 9 A. He calls me the miracle guy or the miracle 10 man. And it's a strange feeling at 62 years old 11 to be hugged by another man that's pretty close to 12 your age. And he literally hugs you because he's 13 glad to see you. 14 Q. This is up in -- this is up in Nashville 15 that you're going to see this doctor? 16 A. Yes, sir, at Vanderbilt -- 17 Q. Okay. 18 A. -- Hospital. 19 Q. And his name is Dr. Stein? 20 A. That's correct. 21 Q. Okay. Is he a good fellow too? 22 A. Oh, he's a great guy. 23 Q. Okay. All right. Have we gone through 24 the bone marrow in 2001? 25 A. Yes. Of course, I had my transplant in</p>

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<p style="text-align: right;">Page 37</p> <p>1 2002.</p> <p>2 Q. Okay.</p> <p>3 A. I was in a wheelchair for about eight or 4 ten weeks after that. It took me some time to get 5 over it. After that, I thought I was doing great, 6 had a PET scan. They discovered tumors in my 7 lungs and began treating me for that.</p> <p>8 Q. In both lungs?</p> <p>9 A. That's correct.</p> <p>10 Q. Well, let me ask you, as far as the -- I'm 11 trying to group these by year.</p> <p>12 But as far as the 2001 bone marrow cancer 13 treatments, did you submit claims to the 14 defendants?</p> <p>15 A. Yes, I did.</p> <p>16 Q. Did you have any problem with the claims 17 processing at that point?</p> <p>18 A. None whatsoever. There was a ceiling on 19 that, and they explained it to me, and I accepted 20 that.</p> <p>21 Q. What -- what do you mean they explained it 22 to you?</p> <p>23 A. When we called them in reference to that, 24 whether the coverage would be -- how the coverage 25 would work, the individual that we spoke with</p>	<p style="text-align: right;">Page 39</p> <p>1 itemized statements.</p> <p>2 Q. And did they pay the full amount reflected 3 on those itemized statements?</p> <p>4 A. Yes.</p> <p>5 Q. Subject to those caps you pointed out 6 earlier?</p> <p>7 A. Yes, sir, they did.</p> <p>8 Q. Okay. No problem with them up to that 9 point?</p> <p>10 A. No, sir.</p> <p>11 Q. As a matter of fact, under this policy, do 12 they give you incidental charges as well?</p> <p>13 A. There were some incidental charges that 14 were covered and some that weren't. Some of them 15 have a -- an annual cap, again, which I do 16 understand, and I accepted that.</p> <p>17 Q. Okay. Let's -- let's go ahead and move on 18 to the 2002 fighting the dragon, I guess. You 19 had -- you had tumors in your lungs diagnosed in 20 2002?</p> <p>21 A. It was late 2002, early 2003 maybe, they 22 diagnosed me with tumors in my lungs. I began 23 treatment for that. And I want to say it was at 24 that time I began receiving Rituxan, which is a 25 new -- at that time was a brand-new cancer drug.</p>
<p style="text-align: right;">Page 38</p> <p>1 indicated that -- and I think it was a \$35,000 2 ceiling. And that was the rules and the 3 regulations, and I -- okay, I'm -- I understood 4 that.</p> <p>5 Q. Is that your understanding from looking at 6 the policy?</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 A. I had -- this had been explained to me 10 that there were several procedures that had 11 ceilings on them, and I understood that going in.</p> <p>12 Q. Do you have any problem with that 13 particular provision of the policy?</p> <p>14 A. None whatsoever.</p> <p>15 Q. Okay. And that was something you agreed 16 to when you entered into this contract?</p> <p>17 A. That's correct.</p> <p>18 Q. Okay. And you'll live by that?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Now, let me ask you, when you went and 21 filed your claims related to the 2001 bone marrow 22 treatments, did the defendants ask you for 23 statements from your medical care provider -- 24 medical coverage provider?</p> <p>25 A. No. All we submitted was the doctors'</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Okay. And -- and if you can -- I mean, 2 the jury is not going to know what Rituxan is or 3 what it does, and I know you're not a doctor. But 4 if you can tell them what your understanding is 5 since you're taking it. What is Rituxan?</p> <p>6 A. I was -- it was explained to me that it is 7 gene cell therapy. It was the -- at that time, it 8 was the leading edge -- and still is. It's even 9 more widely accepted now. At that time, it was at 10 the leading edge of the technology they were 11 using. At that time, the doctor told me I was the 12 second individual in the state of Alabama to get 13 it. It had already been approved a few days prior 14 to that for use.</p> <p>15 Q. This Rituxan, is it a form of chemotherapy 16 or is it --</p> <p>17 A. Yes.</p> <p>18 Q. Okay. All right. Is it a pretty 19 expensive treatment?</p> <p>20 A. Very expensive.</p> <p>21 Q. You have seen the doctors' bills?</p> <p>22 A. Yes.</p> <p>23 Q. Do you recall generally how much of one 24 treatment -- well, what is a treatment in your 25 terms?</p>

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<p style="text-align: right;">Page 41</p> <p>1 A. It would take approximately seven hours 2 for me to get this treatment. The first treatment 3 you get is really bad. They -- the medical 4 profession refers to it as shake and bake. You 5 get an extremely high fever, and every muscle in 6 your body begins to quiver and contract. And I 7 haven't been that sore in my entire life after I 8 had that first treatment, and I did get all of the 9 symptoms that they said possible to get, and I did 10 get them.</p> <p>11 But after the first treatment, it didn't 12 occur again, and they said that was again normal.</p> <p>13 And you had asked -- the treatment at that 14 point was around \$6,000, give or take a couple 15 hundred dollars. And I -- I want to say 6400, but 16 I can't swear to that.</p> <p>17 Q. Okay. When you sent the bill for Rituxan 18 in to the defendants, did you send the doctor's 19 statement, or did you send the statement for 20 BlueCross?</p> <p>21 A. We sent in the doctor's itemized 22 statement.</p> <p>23 Q. Okay. And did they pay the full amount of 24 that Rituxan treatment?</p> <p>25 A. Yes, they did. There were some subsequent</p>	<p style="text-align: right;">Page 43</p> <p>1 I've seen, it appears as though they're all here. 2 Q. Okay. Well -- all right. We had tumors 3 in the lung in late '02, early '03. Now they're 4 in the abdomen in '04. Are you undergoing chemo 5 this entire period of time between '02 and '04? 6 A. Yes, I was getting breaks periodically. I 7 would get two, three, four months of chemo, then I 8 would get a break for a while.</p> <p>9 Q. Okay.</p> <p>10 A. Again, now, we have come another circle. 11 Christmas morning, which was a Monday -- Sunday my 12 wife and I had gone to church, and having had so 13 many tumors and being aware of cancer, I 14 constantly when I'm showering, I check myself all 15 over for any tumors or anything or any lumps that 16 I don't think should be there. I was fine.</p> <p>17 Monday morning I got up, I had had a pain 18 in my right breast. At that point, I was taking a 19 shower, and I noticed a small lump just to the 20 left of my nipple, called the doctor on Tuesday, 21 went to see him on Thursday. At that point, the 22 lump had grown considerably larger to about the 23 size of half a lemon. At that point, they began 24 doing some tests.</p> <p>25 The following weekend -- it seems that</p>
<p style="text-align: right;">Page 42</p> <p>1 items that were not covered, which I understood 2 that from the past dealings, and -- but they did 3 pay 100 percent on the Rituxan treatment itself.</p> <p>4 Q. And when you say 100 percent, you're 5 referring to what bill?</p> <p>6 A. The -- the -- the bills -- the itemized 7 bill that we received from the doctor.</p> <p>8 Q. Okay. All right. Tumors in lung in late 9 '02, early '03, another treatment of chemo. Did 10 they resolve?</p> <p>11 A. Yes, they began going down. Following 12 that, I did some -- I did a PET scan, and things 13 were doing well. The next PET scan came up, they 14 discovered tumors in my -- excuse me, in my upper 15 abdomen, and we continued with the chemo at that 16 time.</p> <p>17 Q. When was that that they discovered tumors 18 in your abdomen?</p> <p>19 A. I want to say maybe 2004.</p> <p>20 Q. And all the records you have relating to 21 the billing of that treatment, those are sitting 22 in front of you in Exhibit 2?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay.</p> <p>25 A. I've looked through these, and from what</p>	<p style="text-align: right;">Page 44</p> <p>1 holidays are the times I have my problems. The 2 following weekend was New Year's. I had gotten up 3 on the 2nd of January and couldn't walk on my own, 4 couldn't breathe, and the doctor sent me to the 5 emergency room. And they discovered that my 6 kidneys had totally failed. I had complete renal 7 failure.</p> <p>8 Q. When was this?</p> <p>9 A. That was January 2 of 2007.</p> <p>10 Q. Okay. All right. Now, I want to make 11 sure, for the period between '02 and '04, did you 12 have tumors anywhere else besides the lung and 13 abdomen?</p> <p>14 A. No, sir.</p> <p>15 Q. Not -- okay. You're -- you're looking up 16 at the sky. Are you -- am I -- are you getting 17 tired because I can -- I can -- you're not -- 18 you're not focused on me. Do you need to take a 19 break?</p> <p>20 A. I think right now I'm okay.</p> <p>21 Q. Okay.</p> <p>22 A. What I -- I roll my eyes up because I'm 23 trying to see where my brain is at, see if it's 24 functioning.</p> <p>25 Q. Okay. Between '02 and '04, have you told</p>

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<p style="text-align: right;">Page 45</p> <p>1 me about all the tumors and all the treatments 2 that you can recall at this time? 3 A. To the best of my recollection, yes, sir. 4 Q. Okay. Did you submit claims to the 5 defendants for this time period? 6 A. Yes. 7 Q. And did they pay you the amount reflected 8 on your doctor's bill or the amount reflected on 9 the amount BlueCross paid? 10 A. They paid on the itemized doctor's bill, 11 the statement directly from the doctor. 12 Q. And did they pay 100 percent of that 13 itemized doctor's statement? 14 A. They -- they paid the -- the chemo, there 15 were a few shots that I get in there that there is 16 a ceiling on. 17 Q. You know what, I see what you're saying. 18 You've -- you're saying that under the terms of 19 the policy, there's some things that don't get 20 paid? 21 A. That's correct. 22 Q. Okay. All right. So let me say it 23 another way. Let me not say 100 percent. Let me 24 say for the -- for example, the chemo treatment, 25 did they pay 100 percent of what the doctor's</p>	<p style="text-align: right;">Page 47</p> <p>1 left kidney is working at approximately 5 percent. 2 My right kidney is working at 100 percent. I have 3 four tumors across the top of my abdomen. I have 4 a 4 mill- -- a .4-millimeter tumor in my right 5 lung. And the lump from my right breast was 6 removed, and it was cancerous. So now I'm dealing 7 with breast cancer, which is not that common in 8 men, but it does happen. 9 Of course, I have the one tumor in my 10 right lung, which is going down, and the tumors on 11 my kidneys and the other tumors I will find out 12 next month how they're doing. 13 Q. You're currently undergoing chemotherapy? 14 A. Yes, sir, I am. 15 Q. Okay. Are those treatments -- I mean -- 16 let me do it this way. Let me show you what I'm 17 going to mark as Exhibit 3, which is his affidavit 18 that was submitted earlier to the defendants. 19 (Marked Exhibit No. 3.) 20 BY MR. SINCLAIR: 21 Q. And ask you if you can identify that 22 document for us. Have you seen that before today? 23 A. Yes, sir, I have. 24 Q. Okay. Take a look through, flip back to 25 the last page, and tell me if that is, in fact,</p>
<p style="text-align: right;">Page 46</p> <p>1 statement reflected the charges were? 2 A. Yes, sir. 3 MR. LEVENTHAL: Objection. 4 Go ahead. 5 THE WITNESS: They did. 6 BY MR. SINCLAIR: 7 Q. I'm sorry, what? 8 A. Yes, sir, they did. 9 MR. SINCLAIR: Okay. Grounds? 10 MR. LEVENTHAL: Form of the question. 11 BY MR. SINCLAIR: 12 Q. Okay. Did you have any problem with them 13 up until the end of '04? 14 A. No. 15 Q. Did -- did the defendants do anything to 16 reduce your benefits? 17 A. No, sir. 18 Q. Okay. Up until '04? 19 A. That's correct. 20 Q. Okay. Stepping into '05, '06 now, I hate 21 to ask this, but do we have more tumors in '05, 22 '06? 23 A. Yes, sir. 24 Q. Where else? 25 A. I now have a tumor on each kidney. My</p>	<p style="text-align: right;">Page 48</p> <p>1 your signature on the last page? 2 MR. LEVENTHAL: Do you have a copy of 3 that? 4 MR. SINCLAIR: I do, but I marked it 5 up, and I -- I didn't bring an extra one. I tell 6 you what, we'll let him hand you his, and he can 7 look at this one. It's just got little 8 scratches on it where I -- you know what, that's 9 not that big of a -- here, you can take a look at 10 that. 11 THE WITNESS: Yes, it is. Getting 12 back to your question, yes, that is my signature. 13 BY MR. SINCLAIR: 14 Q. Okay. Let me ask it again, because 15 playing the video for the jury, we have to chop it 16 up anyway, but I want to make sure that we -- we 17 don't have to do it for that question. 18 A. Okay. 19 Q. Take a look at what I've marked as 20 Exhibit 3. Do you recognize that document? 21 A. Yes, sir, I do. 22 Q. Okay. If you would, please tell the jury 23 what that document is. 24 A. Let me make sure I read it, make sure I 25 know what it is.</p>

12 (Pages 45 to 48)

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<p>1 Q. Sure.</p> <p>2 A. But it's basically describing what I have</p> <p>3 gone through, kind of a history of -- of my cancer</p> <p>4 and my tumors and my treatment.</p> <p>5 Q. Okay. Is that your signature on the last</p> <p>6 page of Exhibit 3?</p> <p>7 A. Yes, sir, it is.</p> <p>8 Q. Okay.</p> <p>9 MR. SINCLAIR: Move to admit</p> <p>10 Exhibit 3.</p> <p>11 MR. LEVENTHAL: Objection.</p> <p>12 MR. SINCLAIR: On grounds?</p> <p>13 MR. LEVENTHAL: This is just -- it</p> <p>14 looks like a recitation of all kinds of testimony,</p> <p>15 so I have an objection to -- to admissibility.</p> <p>16 You can't go through this and dissect everything</p> <p>17 in here. If you want to admit it subject to my</p> <p>18 objections, that's fine.</p> <p>19 MR. SINCLAIR: Well, I'm -- I'm</p> <p>20 moving to admit it. And as I understand your</p> <p>21 objections, it's -- okay. I understand your</p> <p>22 objection. We'll argue about it later.</p> <p>23 BY MR. SINCLAIR:</p> <p>24 Q. All right. Mr. Gooch, let me ask you,</p> <p>25 does Exhibit 3 accurately and truthfully reflect</p>	<p>1 able to do I can't do at all now. And as much as</p> <p>2 I enjoy going places and doing things, I'm pretty</p> <p>3 much stuck at home.</p> <p>4 Relay For Life, which is a cancer</p> <p>5 fundraiser nationwide, I was not able to</p> <p>6 participate this year because I was very ill, and</p> <p>7 that's something that I look forward to all the</p> <p>8 time.</p> <p>9 Q. Let me ask you, Exhibit 3 reflects a</p> <p>10 statement from you that you actually go blind</p> <p>11 after some of these treatments?</p> <p>12 A. Yes. When I'm -- the current series that</p> <p>13 I'm taking was six treatments. And the first four</p> <p>14 treatments they were giving me high steroids,</p> <p>15 which would cause me to not be able to see where I</p> <p>16 could safely drive. I couldn't watch TV because I</p> <p>17 couldn't see the details on the screen.</p> <p>18 My son, my wife, my friends had to end up</p> <p>19 driving me places if I wanted to go somewhere. In</p> <p>20 low light conditions, I could see okay, but I</p> <p>21 stopped driving because I felt it was unsafe, not</p> <p>22 for me alone but for anybody else out there. I</p> <p>23 couldn't judge speed of cars; I couldn't judge</p> <p>24 distance. I couldn't see it well enough to safely</p> <p>25 negotiate.</p>
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<p>1 your course of dealings with the defendants and</p> <p>2 your cancer treatments?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. I had initially asked you, I</p> <p>5 believe, earlier that -- if you were currently</p> <p>6 undergoing chemo. Let me ask you -- I hear the</p> <p>7 word chemo, and I'm a layman, I don't have any</p> <p>8 understanding of it. Can you tell the jury what</p> <p>9 it's like for you in your current chemo</p> <p>10 treatments?</p> <p>11 A. Well, the chemo, to kind of answer that</p> <p>12 first question as best I can, you're given, if</p> <p>13 you're receiving chemo, it is chemicals. They are</p> <p>14 deadly. They are technically poison. They give</p> <p>15 you just enough not to kill you in the hopes that</p> <p>16 they can keep you alive as the patient and kill</p> <p>17 the cancer cells. In many cases, it's quite</p> <p>18 successful; in some cases, it's not.</p> <p>19 Having -- this next Monday -- excuse me.</p> <p>20 This next Monday I get my next chemo treatment,</p> <p>21 and he's going to back off a little bit because</p> <p>22 the one they gave me last time was -- put me in</p> <p>23 the hospital.</p> <p>24 But this chemo has been very, very</p> <p>25 difficult on me. Things that I normally have been</p>	<p>1 Q. Okay. Well, let's -- let's take the</p> <p>2 period from '04 to January of '06. You're still</p> <p>3 submitting claims to the defendants in that time</p> <p>4 period?</p> <p>5 A. Yes, we did.</p> <p>6 Q. And are they still paying for chemo and</p> <p>7 for the other benefits for which there isn't a</p> <p>8 cap? Are they still paying 100 percent of what's</p> <p>9 reflected on your doctor's bill for that specific</p> <p>10 treatment?</p> <p>11 A. Yes, sir, they were.</p> <p>12 Q. Okay. Now, did something happen in 2006</p> <p>13 that changed the amount of benefits you were</p> <p>14 receiving?</p> <p>15 A. Yes, it did. I -- I received a letter,</p> <p>16 and I want to say it was in May, informing me that</p> <p>17 they were going to pay on actual charges. And I</p> <p>18 had called the company to find out what that was,</p> <p>19 and they told me that that was what the actual</p> <p>20 charges would be.</p> <p>21 Q. Let me -- let me back up. Let me ask you</p> <p>22 a question. You just said actual charges twice,</p> <p>23 and I'm not sure I understood.</p> <p>24 In your opinion -- well, have you reviewed</p> <p>25 this policy?</p>

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<p>1 A. Yes, I have.</p> <p>2 Q. Okay. Did you review it before you purchased it?</p> <p>3 A. Yes, I did.</p> <p>5 Q. And in your review of this policy, you understand that certain terms are within the policy. I'm not asking -- you're not a lawyer, are you?</p> <p>9 A. No, sir.</p> <p>10 Q. Okay. I'm asking you for your understanding as a layman of these terms. Okay?</p> <p>12 A. Uh-huh.</p> <p>13 Q. There's a term within that policy that says they'll pay actual expenses. Did you see that term?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And for certain things they'll pay actual expenses, right?</p> <p>19 A. That's correct.</p> <p>20 Q. What's your understanding of what actual expenses were, in your course of dealing with them and your understanding as a layman?</p> <p>23 A. My understanding of it was at that point and -- and still is that whatever the doctor bills you for, that's the actual charge.</p>	<p>1 little bit better?</p> <p>2 A. Yeah, I got to take a few moment's break</p> <p>3 and --</p> <p>4 Q. Okay. You let us know if we have to take a break again. Okay?</p> <p>6 A. Okay.</p> <p>7 Q. The last questions we were talking about, what happened in 2006. Do you recall receiving correspondence from the defendants in 2006?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Do you -- well, let me just ask you, do you recall what they -- you obviously had been submitting claims up through 2006, hadn't you?</p> <p>15 A. That's correct.</p> <p>16 Q. Okay. When was the last course of treatment you received that you submitted a claim to the defendants for?</p> <p>19 A. In 2006? I'm trying to think. It was after the -- I had received a letter in May explaining to me that they would have to have the EOBS, that that's what they were going to pay from.</p> <p>24 Q. What is an EOB?</p> <p>25 A. The explanation of benefits.</p>
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<p>1 Q. Well, I'm saying actual expenses. If --</p> <p>2 A. Well, the actual expense.</p> <p>3 Q. Okay. There's an actual charge provision in there that talks about actual charges. Are you telling me that -- okay. I think you just got two terms confused.</p> <p>7 A. That's very possible.</p> <p>8 Q. And -- and we've been going 55 minutes.</p> <p>9 A. Okay.</p> <p>10 Q. Why don't we take a break. Okay?</p> <p>11 A. Okay.</p> <p>12 Q. Do you need -- would it help you to close your eyes for a few minutes and sit quietly?</p> <p>14 A. It probably would, just kind of relax.</p> <p>15 Q. Okay. What don't you -- if you need -- I'm sure with one kidney -- we'll take a break, go off the record, if we can, you go take a break.</p> <p>18 Okay?</p> <p>19 THE VIDEOGRAPHER: We're going off the record. The time is 9:54 a.m.</p> <p>21 (Brief recess observed.)</p> <p>22 THE VIDEOGRAPHER: We're back on the record. The time is 10:07 a.m.</p> <p>24 BY MR. SINCLAIR:</p> <p>25 Q. All right. Mr. Gooch, do you feel a</p>	<p>1 Q. From?</p> <p>2 A. BlueCross BlueShield, and as well as --</p> <p>3 I'm covered under Medicare as well.</p> <p>4 Q. Okay.</p> <p>5 A. That's what they were going to pay from.</p> <p>6 Q. Let's -- let's step back a minute so the jury understands. Does this policy pay your medical providers for your treatment?</p> <p>9 A. No, it pays me directly.</p> <p>10 Q. Okay. Is this policy, in your understanding when you bought it, intended to pay medical benefits?</p> <p>13 A. To me only, not -- not to the doctor. It was -- my understanding was it was money that was coming to me that would pay me for the expenses that were incurred for my chemo and a few other incidental expenses.</p> <p>18 Q. Okay. And were those expenses set at different levels in your understanding and under the policy?</p> <p>21 A. The chemo, the -- he explained it to me -- this Jerry explained it to me it was 100 percent. And subsequently, again, he also explained that there were other items they paid that had a set amount.</p>

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<p style="text-align: right;">Page 57</p> <p>1 Q. Okay. And let's make sure the 2 jury under -- that I understand and the jury 3 understands what you mean when you keep saying 100 4 percent. What do you mean 100 percent? When you 5 say that, what do you mean?</p> <p>6 A. Well, my understanding at the time and the 7 subsequent claims that we started in '99, that 8 they would pay the actual charge that was coming 9 from the doctor. If the doctor's expense -- or 10 the doctor's chemo charge was 6,000, that was the 11 check I received, and it was like that all along, 12 never changed.</p> <p>13 Q. Up until when?</p> <p>14 A. Up until we had filed in -- several claims 15 in June. They paid the full rate at that point. 16 After June, beginning July 1, I believe it was of 17 206 -- or 2006, they were paying on the EOBs and 18 said they would do -- they would no longer pay 19 from the doctor's statement, just from the EOB of 20 the -- BlueCross BlueShield.</p> <p>21 Q. Okay. And let me ask you, the -- the 22 defendants have -- have said to the court that 23 what they did was just change the claims handling 24 process. Did they change the claims handling 25 process? Did they start requiring different</p>	<p style="text-align: right;">Page 59</p> <p>1 trying to understand. The EOBs -- let's say 2 BlueCross statements. BlueCross statements -- 3 BlueCross pays less than the doctor bills -- 4 A. That's correct.</p> <p>5 Q. -- for your Rituxan --</p> <p>6 MR. LEVENTHAL: Objection to the form 7 of the question.</p> <p>8 Go ahead.</p> <p>9 BY MR. SINCLAIR:</p> <p>10 Q. I'm sorry. Does BlueCross pay less to 11 your doctor for Rituxan treatments than your 12 doctor sends you a bill for?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Do you -- when you took out this 15 policy, when you sat down with Jerry and during 16 the first eight years you were submitting these 17 chemo treatments, was it ever your understanding 18 you had to have BlueCross statements submitted in 19 order to be paid from these defendants?</p> <p>20 A. No. As a matter of fact, we -- we 21 received a letter, I want to say it was November 22 of '99 or December, explaining -- because we had 23 called and asked, how do we apply for the 24 benefits. And they -- in the letter, it details 25 that we must send in an itemized statement from</p>
<p style="text-align: right;">Page 58</p> <p>1 proofs?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Did that subsequently have a 4 change -- or create a change to your benefits?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Tell me how this new process that 7 they put in place in 2006 changed the amount of 8 benefits. And if you can be specific, let's talk 9 about Rituxan, if we can. That's a drug you're 10 still getting, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And you submitted a claim in 2007 for 13 that?</p> <p>14 A. Yes, we have.</p> <p>15 Q. Okay. And have the defendants paid the 16 amount on your doctor's bill for that?</p> <p>17 A. The doctor's statement, no.</p> <p>18 Q. Okay. What did they pay?</p> <p>19 A. They paid from the EOB, the explanation of 20 benefits from the insurance company, which the 21 doctor had chosen -- they had made an offer 22 apparently, the way I understand it, and the 23 doctor was willing to give them a discount or take 24 a lesser amount.</p> <p>25 Q. Let -- and that's -- that's what I'm</p>	<p style="text-align: right;">Page 60</p> <p>1 the doctor.</p> <p>2 Q. When you took out this policy, did Jerry 3 ask you if you had BlueCross BlueShield or some 4 medical coverage?</p> <p>5 A. No, he did not.</p> <p>6 Q. Did he say that the only way they would 7 issue this policy to you would be if you had 8 BlueCross or -- or Medicaid or something?</p> <p>9 A. No.</p> <p>10 Q. Okay. Was this policy in any way, shape, 11 or form, in your understanding, your conversation 12 with Jerry, ever intended to pay your doctors for 13 the treatments?</p> <p>14 A. No.</p> <p>15 Q. Okay. Was it ever intended to be a 16 supplemental medical coverage policy, in your 17 understanding?</p> <p>18 A. No.</p> <p>19 Q. Okay. When we talk about the amount 20 BlueCross pays, you know this, how do you know 21 that BlueCross pays less for Rituxan than your 22 doctor sends you a charge for?</p> <p>23 A. The EOB, which is explanation of benefits, 24 lists the price, the cost that the doctor has 25 billed BlueCross BlueShield or the -- the medical</p>

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<p>1 provider, the insurance provider. And then they 2 have a column there that says, your doctor has 3 agreed to accept this amount in payment in full. 4 And that amount is always lower than what the 5 doctor actually charged.</p> <p>6 Q. So it's your understanding that BlueCross 7 gets a discount?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay. Let me back up. You mentioned 10 before that you had conversations with some of the 11 defendants' employees?</p> <p>12 A. That's correct.</p> <p>13 Q. If you can, let's -- let's go back to the 14 first conversation you had with the defendants' 15 employees. Was that in '99?</p> <p>16 A. The very first contact we made, yes, was 17 in '99.</p> <p>18 Q. Okay.</p> <p>19 A. Because at that point I had been diagnosed 20 with cancer, and we just wanted to find out what 21 the procedures were, what we had to do to file a 22 claim, how we had to do it, just getting a 23 guideline.</p> <p>24 Q. At that point, did they tell you they 25 would only pay you whatever your medical care</p>	<p>1 were willing to pay for stem cell transplants?</p> <p>2 A. Yes, we did. And, again, it was one of 3 those things that I had been explained by Jerry 4 that there were some ceilings or maximum limits, 5 which, again, I accepted that, and I understood 6 that, and they explained to us that, hey, this is 7 one of those items that there is a maximum benefit 8 that we will pay. And I understood that at the 9 time and had no objection to it.</p> <p>10 Q. When -- when you talked to the defendants' 11 employees before going to the stem cell treatment 12 at Vandy, that's where you had the stem cell 13 treatment, right?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. When you talked to them, did they 16 tell you that they were still issuing and selling 17 these policies?</p> <p>18 A. At one point, one of the ladies I spoke 19 with informed me that they no longer sold that 20 type of policy because folks were living much 21 longer due to the new medical advancements, and 22 they no longer sold that policy because it cost 23 too much money --</p> <p>24 Q. What cost --</p> <p>25 A. -- from the company. The company had to</p>
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<p>1 provider paid your doctor?</p> <p>2 A. No.</p> <p>3 Q. Did they tell you they would pay whatever 4 your doctor was charging on his bill?</p> <p>5 A. My -- yes. To the best of my 6 recollection, they said you send in the itemized 7 doctor's statement and that's what we will pay 8 from.</p> <p>9 Q. And did you subsequently receive an 10 instruction letter from them on the same thing?</p> <p>11 A. Yes, we did.</p> <p>12 Q. Okay. When was the next conversation that 13 you had with the defendants' employees that you 14 can recall?</p> <p>15 A. We had a few conversations over the period 16 of time, various coverages, especially when I went 17 to my -- for my transplant. And we called them to 18 find out -- because we had gotten a letter telling 19 us that there was a ceiling, that there was a 20 maximum they would pay on that procedure, and we 21 called to find out what we had to do, what the 22 maximum amount was, and how to go about it. And 23 that's what -- we followed their instructions.</p> <p>24 Q. Did -- did you actually talk to the 25 defendants' employees about the amount that they</p>	<p>1 pay out a lot of money because -- the policy, the 2 way it was configured, the way it was paid out. 3 Apparently when that policy was written, when you 4 had cancer, it was a death sentence. 5 And at that point, I believe that's when 6 they changed the policy. I've never seen a policy 7 following that, so I just went by what the -- the 8 individual told me.</p> <p>9 Q. Okay. And this is somebody you contacted 10 at the defendants' phone numbers that they gave --</p> <p>11 A. That is correct.</p> <p>12 Q. Okay. After you received the letter in 13 around May of 2006 informing you that the benefits 14 were going to be reduced, did you have a 15 conversation with the defendants' employees?</p> <p>16 A. Yes, I did.</p> <p>17 Q. Okay. Please tell me about the first 18 conversation you had with the defendants' 19 employees.</p> <p>20 A. Well, I had spoken to them and objected to 21 what this meant to me. I said, this is going to 22 cut my benefits. And we spoke about that, and I 23 told the lady, I said, I don't understand how I 24 have a contract, an open contract and an open 25 claim. She said, oh, well, if you have an open</p>

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<p>1 claim, this letter is not going to affect you, as 2 long as you have an open claim.</p> <p>3 But once you have been declared in 4 remission or whatever and you no longer have an 5 open claim, the next claim you make will be 6 on the -- the reduced list paid on the EOB. But 7 as long as you have an open claim, it will still 8 continue like it always has.</p> <p>9 Q. Okay.</p> <p>10 A. And I -- I never got the lady's name. I 11 wish I had. I just didn't do that.</p> <p>12 Q. Okay. Did she express regret at the 13 change?</p> <p>14 MR. LEVENTHAL: Objection.</p> <p>15 THE WITNESS: Not openly.</p> <p>16 MR. LEVENTHAL: Go ahead.</p> <p>17 BY MR. SINCLAIR:</p> <p>18 Q. What do you mean not openly?</p> <p>19 A. It just felt -- I kind of got the feeling 20 that she was trying to explain to me that my 21 benefits weren't going to change, that others who 22 haven't filed a claim as yet, theirs would change 23 but mine would not because of the fact I already 24 had an open claim.</p> <p>25 Q. Did your benefits subsequently change?</p>	<p>1 A. We have -- to my knowledge, every time 2 there was a claim following this letter, we had 3 sent along the EOB along with the doctor's 4 statement. And most of the time I believe my wife 5 would put on there that we were -- we protested or 6 was disappointed or did not like or agree with the 7 reduction.</p> <p>8 Q. When you were talking to the defendants' 9 employees those first two conversations you recall 10 there, did you tell them you wanted them to keep 11 paying 100 percent of the doctor's statement?</p> <p>12 A. Yes, I told them that. I said, I'm not 13 giving anybody a discount; I didn't contract for a 14 discount. And the lady explained to me that this 15 is across the board, that everybody is being done 16 this way, and it is a change in the policy.</p> <p>17 Q. Did she tell you everybody who had a 18 Life Investors cancer only policy was getting done 19 this way?</p> <p>20 A. She didn't really -- she inferred that.</p> <p>21 Q. Okay.</p> <p>22 A. She didn't actually say that, but she 23 inferred that everyone in this situation has 24 received this letter and will be -- that's how 25 they'll be paid, so . . .</p>
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<p>1 A. Yes, they did.</p> <p>2 Q. Okay. Let me ask you, when did you stop 3 working as a mechanic in Pulaski?</p> <p>4 A. It was late July, early August of '99.</p> <p>5 Q. Have you worked for pay since?</p> <p>6 A. No.</p> <p>7 Q. Do you occasionally do volunteer work when 8 you can?</p> <p>9 A. Yes, I do.</p> <p>10 Q. Okay. Do you have any compensation -- 11 paid compensation for work that you've received 12 since you've stopped working in Pulaski?</p> <p>13 A. No.</p> <p>14 Q. Okay. Do you -- this policy, is this your 15 personal source of income at this point?</p> <p>16 A. Yes, it is. I -- of course, I'm on 17 disability, SSI, and I get approximately one-third 18 maybe of what I used to make, and it doesn't cover 19 my bills.</p> <p>20 Q. Okay. Did you in conversation with the 21 defendants' employees ever tell them that you 22 wanted them to continue paying 100 percent of the 23 doctors' bills?</p> <p>24 A. Yes.</p> <p>25 Q. Did you send them a letter stating such?</p>	<p>1 Q. Do you -- well, and let me ask you, do you 2 feel as though -- I had asked you previously for 3 different time periods if you felt like the 4 defendants had lived up to their promises. Do you 5 remember me asking those questions?</p> <p>6 A. Yes.</p> <p>7 Q. As you sit here today, do you feel like 8 they've lived up to the promises they made you 9 when you bought that policy?</p> <p>10 A. Not at this point, no.</p> <p>11 Q. Okay. Are you aware that this is, in 12 fact, filed as a class action?</p> <p>13 A. Yes, sir, I am.</p> <p>14 Q. Okay. Do you understand that you sit here 15 today for potentially thousands of other people?</p> <p>16 A. Yes, sir, I understand that.</p> <p>17 Q. Are you willing to do that?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Why?</p> <p>20 A. I think it's unfair. When I bought the 21 policy, my understanding was they would pay me 100 22 percent. That's the way it was explained to me. 23 And over the years, I've always thought that when 24 you make an explanation, you make an agreement, 25 it's your word, and you should stand by it.</p>

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<p>1 MR. SINCLAIR: Mr. Gooch, at this 2 point, I can't think of any other questions. I'm 3 going to turn it over to the insurance company's 4 counsel and allow them to ask you some questions 5 subject to my right to redirect if I can come up 6 with some more questions. Okay?</p> <p>7 THE WITNESS: Okay. Understand.</p> <p>8 MR. SINCLAIR: Thank you for your 9 time.</p> <p>10 MR. LEVENTHAL: Mr. Gooch, we are 11 going to take a break before we start. Let's take 12 ten minutes.</p> <p>13 THE VIDEOGRAPHER: We're going off 14 the record. The time is 10:22 a.m.</p> <p>15 (Brief recess observed.)</p> <p>16 THE VIDEOGRAPHER: We're back on the 17 record. The time is 10:40 a.m.</p> <p>18 EXAMINATION</p> <p>19 BY MR. LEVENTHAL:</p> <p>20 Q. Mr. Gooch, my name is Markham Leventhal. 21 I represent the defendants in this case.</p> <p>22 I'm going to introduce a document, and we 23 could label this Exhibit 4. Exhibit 4. It's a 24 copy of an affidavit that was filed in this case. 25 (Marked Exhibit No. 4.)</p>	<p>1 Q. And where were you when you signed that 2 affidavit?</p> <p>3 A. I believe this was signed at the bank 4 where I -- at -- where I bank at. I use their 5 notary frequently.</p> <p>6 Q. And where is that bank?</p> <p>7 A. The bank is the Compass Bank in Athens, 8 Alabama, on Green Street.</p> <p>9 Q. Compass Bank, Athens, Alabama?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Is that your personal bank?</p> <p>12 A. Yes, sir, it is.</p> <p>13 Q. Do you have any accounts at other banks?</p> <p>14 A. I do have one other account at a credit 15 union.</p> <p>16 Q. And what credit union is that?</p> <p>17 A. It's Family Security.</p> <p>18 Q. Where is that located?</p> <p>19 A. That's also in Athens on Highway 31.</p> <p>20 Q. Family Security Credit Union; is that 21 right?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Earlier in your deposition, we referred to 24 another affidavit, which had been introduced as 25 Exhibit 3. Do you see this Exhibit 3?</p>
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<p>1 BY MR. LEVENTHAL:</p> <p>2 Q. Can you take a look at that and tell me if 3 that's your affidavit?</p> <p>4 MR. SINCLAIR: Mr. Gooch, you're 5 looking beyond the affidavit. If you want to just 6 identify what he's labeled on top there as the 7 affidavit, that would be fine.</p> <p>8 THE WITNESS: Yes, it -- it appears 9 to be an affidavit, yes, sir, that I -- I signed.</p> <p>10 BY MR. LEVENTHAL:</p> <p>11 Q. Do you see in the footer of this document 12 it refers to the page numbers for the -- instance, 13 the cover page says Page 2 of 38. Do you see that 14 in the lower right-hand corner of the document on 15 the first page?</p> <p>16 A. Yes, sir, I do.</p> <p>17 Q. I'm going to refer to those page numbers 18 from time to time. Can you turn to Page 6 of 38, 19 and tell me if that's your signature?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And what date did you sign this affidavit?</p> <p>22 A. It would have been the -- it appears to be 23 the 22nd of May, 2007.</p> <p>24 Q. And you had that notarized?</p> <p>25 A. Yes, it was.</p>	<p>1 A. Yes, sir.</p> <p>2 Q. And that's also your affidavit, correct?</p> <p>3 A. Yes, sir, it is.</p> <p>4 Q. When was that affidavit executed?</p> <p>5 A. 22 May of this year.</p> <p>6 Q. Was it executed at the same place?</p> <p>7 A. Yes, I believe it was.</p> <p>8 Q. At a bank in -- at Compass Bank in Athens, 9 Alabama?</p> <p>10 A. Yes, sir, I believe it was.</p> <p>11 Q. Why did you execute two different copies 12 of an affidavit on the same day?</p> <p>13 MR. SINCLAIR: Objection. To the 14 extent that your only response would be from 15 instructions we have given you, I instruct you not 16 to respond to that question. Otherwise, you can 17 respond to the gentleman's question.</p> <p>18 BY MR. LEVENTHAL:</p> <p>19 Q. Any idea?</p> <p>20 A. No, sir.</p> <p>21 Q. Did you read these affidavits before you 22 signed them?</p> <p>23 A. Yes.</p> <p>24 Q. Did you make any changes before you signed 25 them?</p>

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<p>1 A. I do not believe I did, no.</p> <p>2 Q. Did you compare the documents? Can you tell me sitting here today whether these two affidavits are identical other than the pagination and format?</p> <p>6 A. They appear to be.</p> <p>7 Q. Do you know for a fact?</p> <p>8 A. Other than -- what I can see here, they appear to be the same.</p> <p>10 Q. Do you recall executing two affidavits on May 22 of this year?</p> <p>12 A. I honestly don't recall.</p> <p>13 Q. You don't recall that?</p> <p>14 A. No.</p> <p>15 Q. Do you recall Lisa Williams notarizing them?</p> <p>17 A. Yes.</p> <p>18 Q. And who is Lisa Williams?</p> <p>19 A. She's an employee of Compass Bank. I -- I'm assuming it's Lisa. I know her as Lisa.</p> <p>21 Q. So you don't have any recollection of executing these on the 22nd?</p> <p>23 A. My wife and I had gone up there, and we may have executed two. I'm guessing. I was going through chemo at that time. As a matter of fact,</p>	<p>1 Q. BP Chemicals. Now, where is that?</p> <p>2 A. That's in Decatur, Alabama.</p> <p>3 Q. Where?</p> <p>4 A. Decatur, Alabama.</p> <p>5 Q. And how long has she worked there?</p> <p>6 A. I want to say she's worked there about nine years.</p> <p>8 Q. Nine years? And she has an income from that job, correct?</p> <p>10 A. Yes, she does.</p> <p>11 MR. SINCLAIR: Objection as to relevancy.</p> <p>13 BY MR. LEVENTHAL:</p> <p>14 Q. And does she have --</p> <p>15 MR. LEVENTHAL: Objection to relevancy? Paragraph 16 says that the defendant's decision has substantially decreased my income and as a result has financially burdened me and my wife.</p> <p>20 MR. SINCLAIR: Right.</p> <p>21 MR. LEVENTHAL: What's the objection?</p> <p>22 MR. SINCLAIR: It --</p> <p>23 MR. LEVENTHAL: I'm asking about his wife's income.</p> <p>25 MR. SINCLAIR: Right. And he's</p>
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<p>1 my wife has driven me to the bank and drove me straight back home.</p> <p>3 Q. All right. Well, let's refer to what I've introduced as Exhibit 4, that affidavit. And can you take a look at -- take a look at Paragraph 16, please, on Page 5 of 38. Do you see the references in Paragraph 16 to how the policy has created a financial burden?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And that's your testimony; is that accurate, the statements in Paragraph 16 regarding financial burden?</p> <p>13 A. Yes, it is.</p> <p>14 Q. Did you testify earlier that your only sources of income were Social Security disability and benefits under the policy at issue here?</p> <p>17 A. That's correct.</p> <p>18 Q. Is your -- is your wife currently working?</p> <p>19 A. Yes, she is.</p> <p>20 Q. And what does she do?</p> <p>21 A. She is a chemical operator.</p> <p>22 Q. For what company?</p> <p>23 A. BP Chemicals.</p> <p>24 Q. BP Chemicals?</p> <p>25 A. Yes, sir.</p>	<p>1 talking about his income, my income. My previous question to him was, has it decreased your personal income.</p> <p>4 MR. LEVENTHAL: Okay. Right.</p> <p>5 BY MR. LEVENTHAL:</p> <p>6 Q. Okay. I understand that.</p> <p>7 You testified earlier your income was Social Security and benefits under the policy, right?</p> <p>10 A. That's correct.</p> <p>11 Q. And -- and you didn't testify to your wife's income before, correct?</p> <p>13 A. That is correct.</p> <p>14 Q. All right. I'll ask you about that now. So your wife was employed at, what did you say, BP Chemicals?</p> <p>17 A. Yes.</p> <p>18 Q. And she has income from that?</p> <p>19 A. Yes.</p> <p>20 MR. SINCLAIR: Objection as to relevancy.</p> <p>22 BY MR. LEVENTHAL:</p> <p>23 Q. And how much does she make a year?</p> <p>24 MR. SINCLAIR: Objection as to relevancy.</p>

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<p>1 BY MR. LEVENTHAL:</p> <p>2 Q. You can go ahead and answer.</p> <p>3 A. I am not positive. My wife's paycheck is 4 deposited automatically. I very rarely see her 5 check. I never stick my nose into her bank 6 account. We both have separate bank accounts.</p> <p>7 Q. How long have you been married?</p> <p>8 A. It will be 30 years June 25.</p> <p>9 Q. 30 years? And you're telling me you have 10 no idea how much money your wife makes?</p> <p>11 A. No, sir, not for sure.</p> <p>12 Q. No idea?</p> <p>13 A. And if I -- if I gave you a number, I 14 couldn't swear to it as -- as truthful because I 15 honestly don't know.</p> <p>16 Q. And -- and she keeps a separate bank 17 account?</p> <p>18 A. Yes, we have always done that since day 19 one.</p> <p>20 Q. And you're telling me that you have no 21 idea how much money your wife makes?</p> <p>22 MR. SINCLAIR: Objection, asked and 23 answered and argumentative. I believe he's 24 already answered that twice or three times.</p> <p>25 MR. LEVENTHAL: Well, I think he's</p>	<p>1 information other than what my attorneys and I 2 have discussed in reference to that.</p> <p>3 BY MR. LEVENTHAL:</p> <p>4 Q. So you have no idea that -- that your 5 lawyers have asked the court to expedite the case, 6 so to speak, and to issue a preliminary 7 injunction?</p> <p>8 MR. SINCLAIR: Objection. To the 9 extent that the only information you have is 10 coming from your attorneys, you're not to relay 11 those conversations with us.</p> <p>12 THE WITNESS: That's correct.</p> <p>13 MR. LEVENTHAL: I'll -- I'll rephrase 14 the question.</p> <p>15 BY MR. LEVENTHAL:</p> <p>16 Q. Are you aware that you have filed a motion 17 for a preliminary injunction in this case?</p> <p>18 A. Yes.</p> <p>19 Q. And are you aware that this affidavit was 20 filed in support of that?</p> <p>21 A. Yes.</p> <p>22 Q. And why are you asking for an injunction 23 in this case?</p> <p>24 MR. SINCLAIR: Okay. To the extent 25 that the only way you know that is something I've</p>
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<p>1 answered it maybe vaguely once.</p> <p>2 BY MR. LEVENTHAL:</p> <p>3 Q. But I want to make sure for the record and 4 for the jury, if they see this, that you're 5 testifying you have no idea how much money your 6 wife makes?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay. What other sources of income does 9 your wife have besides the job at --</p> <p>10 A. That's it.</p> <p>11 Q. That's it?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Do you understand that -- that your 14 lawyers have asked the court for a preliminary 15 injunction in this case based in part upon your 16 financial wherewithal?</p> <p>17 MR. SINCLAIR: Objection. I'm going 18 to -- to the extent that you're only aware of this 19 from conversations you've had with me or other 20 attorneys in this matter, you're not to relay 21 those conversations in response to this question.</p> <p>22 If you have information beyond that, 23 please respond to the best of your ability to this 24 gentleman's question.</p> <p>25 THE WITNESS: I have no other</p>	<p>1 told you or other attorneys have told you, I'm 2 going to instruct you not to answer. If you have 3 some reason outside of that that you're aware of 4 that you've asked for this immediate relief, you 5 can answer that gentleman's question.</p> <p>6 THE WITNESS: Okay.</p> <p>7 BY MR. LEVENTHAL:</p> <p>8 Q. Do you have any understanding, other than 9 what came from your lawyers, as to why you filed a 10 motion for a preliminary injunction in the case?</p> <p>11 A. No.</p> <p>12 Q. Have any doctors told you that you are 13 terminally ill as you sit here today?</p> <p>14 A. Yes.</p> <p>15 Q. And what doctors would that be?</p> <p>16 A. Dr. Stein.</p> <p>17 Q. When did he tell you that?</p> <p>18 A. He had informed my doctor, my oncologist, 19 and I want to say it was the summer of 2001, and 20 he did not tell me that until after I had had my 21 transplant.</p> <p>22 Q. Are you saying that Dr. Stein told you in 23 the summer of 2001 that you were terminally ill?</p> <p>24 A. No, sir, he told my doctor, my oncologist, 25 Dr. Mahn Dang.</p>

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<p style="text-align: right;">Page 81</p> <p>1 Q. Well, let me rephrase the question. 2 Have -- have any doctors told you that you are 3 terminally ill? 4 A. Dr. Stein did in the spring of 2002 after 5 I had completed my treatments. 6 Q. In the spring of 2002? How about within 7 the last year? 8 A. Not directly, no. 9 Q. Not directly? Did any doctors tell you 10 within the last year you were terminally ill 11 indirectly? 12 A. Insinuating that I was extremely ill and 13 that my treatment would -- my life would depend 14 upon my treatments. 15 Q. Do you know what terminally ill means? 16 A. Oh, yes. 17 Q. It means you are dying, correct? 18 A. That's correct. 19 Q. And your death is imminent? 20 A. That's correct. 21 Q. Have any doctors told you within the last 22 year that your death is imminent? 23 A. Not directly, no. 24 Q. Have any doctors told you that indirectly? 25 A. Yes.</p>	<p style="text-align: right;">Page 83</p> <p>1 (Marked Exhibit No. 5.) 2 BY MR. LEVENTHAL: 3 Q. This is a document with some information 4 from the Alabama Secretary of State referring to a 5 company called Precision Defense Systems, Inc. 6 A. Yes, sir. 7 Q. Have you ever heard of that company? 8 A. Yes, sir. 9 Q. I haven't heard you mention that earlier 10 in your deposition. What is that company? 11 A. I am a -- I have a license from the 12 Alcohol, Tobacco, Firearms and -- bureau explosive 13 division to manufacture weapons and firearms, and 14 this is a hobby of mine. You cannot do it legally 15 in the United States without a license from the 16 federal government. 17 Q. So you have a license from who did you 18 say? 19 A. It's the Alcohol, Tobacco, Firearms, and 20 Explosives division of bureau. 21 Q. That's a federal agency, right? 22 A. Yes, sir, it is. 23 Q. Any licenses from the state of Alabama? 24 A. At this point in time, we have not gotten 25 a license because I have suspended the operations</p>
<p style="text-align: right;">Page 82</p> <p>1 Q. Who? 2 A. Dr. Mahn Dang. 3 Q. Dr. Mahn Dang? When did he tell you that? 4 A. I can't recall the exact date. It was 5 prior to the beginning of this treatment that I'm 6 going through now, which is a series of treatments 7 that I have to take. 8 Q. So when would that have been? 9 A. That would have been the very early 10 beginning of 2007, late 2006 at some point. 11 Q. Are you saying that Dr. Mahn Dang -- is 12 that how you pronounce it? 13 A. That's correct. 14 Q. -- told you that you were likely to die? 15 A. That the likelihood -- the percentage was 16 very high. 17 Q. What time frame? 18 A. Again, as I just stated, late 2006, early 19 2007. 20 Q. And where did he tell you that? 21 A. It would have been in his office. 22 Q. In his office? And where is his office? 23 A. It's in Huntsville, Alabama. 24 MR. LEVENTHAL: I'm going to 25 introduce a document and mark it as Exhibit 5.</p>	<p style="text-align: right;">Page 84</p> <p>1 due to my health. 2 Q. And when did you suspend these operations? 3 A. Approximately two years ago. 4 Q. Okay. So you formed this company in 5 December of 2000, correct? 6 A. Yes, sir. 7 Q. And it says here that the incorporators 8 were Anthony Gooch and Denise Gooch; is that 9 correct? 10 A. That's correct. 11 Q. And who's Denise Gooch? 12 A. That's my wife. 13 Q. And why did you -- why did you decide to 14 form this company in December of 2000? 15 A. So that I could experiment and play with 16 firearms which has been a hobby of mine the 17 majority of my life. I did not want to get in 18 trouble with the federal government, and to do 19 this, getting a license was the foremost thing you 20 have to do to avoid any problems or headaches with 21 the U.S. government. 22 Q. And what did you say the license allows 23 you to do? To manufacture and do what else? 24 A. It allows me to manufacture and sell 25 firearms if I choose to do so.</p>

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<p>1 Q. And did you sell any firearms since you 2 formed this company in December of 2000?</p> <p>3 A. Three or four maybe.</p> <p>4 Q. What kind of firearms did you sell?</p> <p>5 A. Rifles.</p> <p>6 Q. Were these machine guns?</p> <p>7 A. No, sir, not at that point.</p> <p>8 Q. You never sold a machine gun?</p> <p>9 A. I'm in the processes of running the 10 business -- starting the business back up, and I 11 will be selling machine guns, yes, sir.</p> <p>12 Q. And when will you be selling machine guns?</p> <p>13 A. As soon as I can get some inventory in.</p> <p>14 Q. Okay. Well, are you -- are you testifying 15 here under oath that you've never sold a machine 16 gun in your past?</p> <p>17 A. Let me think a second and make sure that 18 I'm answering -- I have sold one.</p> <p>19 Q. You've sold one machine gun. And who did 20 you sell that to?</p> <p>21 A. I would have to look at my records.</p> <p>22 Q. When did you sell that machine gun?</p> <p>23 A. Approximately four years ago, five years 24 ago maybe.</p> <p>25 Q. So your testimony under oath is you only</p>	<p>1 sure.</p> <p>2 Q. What about your wife and son?</p> <p>3 A. My son owns -- I believe he has two or 4 three percent of it, and my wife has the balance.</p> <p>5 My son is also an officer in the corporation.</p> <p>6 Q. What are the current -- who are the 7 current officers of Precision Defense 8 Systems, Inc.?</p> <p>9 A. Myself; my wife, Denise; and my son, Mike.</p> <p>10 Q. And what position do you hold?</p> <p>11 A. President of the corporation.</p> <p>12 Q. And what about your wife and son?</p> <p>13 A. She's -- my wife is vice president; my son 14 is secretary/treasurer.</p> <p>15 Q. Now, where are you going to get this 16 inventory from?</p> <p>17 A. Right now, the inventory is -- my son is 18 working with that to build the inventory up. As I 19 told him, he can't do anything unless he has the 20 inventory built up, and he is in the process of 21 manufacturing and building right now.</p> <p>22 Q. So is the inventory going to be purchased, 23 or is the inventory going to be manufactured?</p> <p>24 A. It will be manufactured. Some of the 25 items will be purchased because we cannot sell</p>
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<p>1 sold one machine gun in your life four or five 2 years ago; is that correct?</p> <p>3 A. To the best of my recollection, yes, sir.</p> <p>4 Q. But you're about to start this business 5 back up?</p> <p>6 A. Well, my son is operate -- is going to be 7 operating the business. I'm turning it over to 8 him.</p> <p>9 Q. What's your role in the business?</p> <p>10 A. Basically just guiding my son along, 11 showing him the ropes. I can no longer operate 12 the machinery.</p> <p>13 Q. Now, are you going to be using this same 14 company, Precision Defense Systems, Inc., or are 15 you going to form another company?</p> <p>16 A. I'm not going to be doing anything with 17 it; my son is going to be controlling it.</p> <p>18 Q. All right. My question was, is it going 19 to be this same company?</p> <p>20 A. It will be under the same name, yes, sir.</p> <p>21 Q. Who owns the stock to that company?</p> <p>22 A. My wife, my son, and I.</p> <p>23 Q. And how much stock do you own?</p> <p>24 A. I own 50 -- I think it's 50 percent. I 25 would have to look at the -- the records to be</p>	<p>1 automatic weapons that we manufacture to private 2 individuals. They have to go to military and law 3 enforcement only.</p> <p>4 Q. How long has this company owned the 5 machinery that it's going to use to manufacture 6 these firearms?</p> <p>7 A. Approximately three to four years, I 8 guess.</p> <p>9 Q. Do you have an accountant for this 10 company?</p> <p>11 A. My wife and I have been handling it 12 because we haven't been doing any business, so, 13 therefore, there's been nothing really 14 transpiring.</p> <p>15 Q. Well, you did purchase the equipment at 16 some point, didn't you?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And when did you do that?</p> <p>19 A. Over a period of about a year and a half, 20 two years, and moved the equipment in about four 21 years ago.</p> <p>22 Q. So you purchased the equipment when?</p> <p>23 A. Some of it I purchased before I had my 24 license.</p> <p>25 Q. And what have you manufactured with the</p>

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<p style="text-align: right;">Page 89</p> <p>1 equipment since the purchase three or four years 2 ago?</p> <p>3 A. Very little. Manufactured a few 4 suppressors which are -- my son is working with 5 selling now.</p> <p>6 Q. So I want to know exactly what you 7 manufactured in the last three to four years. You 8 said one -- you said some suppressors?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And what is a suppressor?</p> <p>11 A. The most common term is silencer, which is 12 incorrect because the -- the device does not 13 silence the weapon; it just reduces the signature 14 of the sound.</p> <p>15 Q. How many silencers or suppressors have you 16 manufactured?</p> <p>17 A. I want to say we probably have eight -- 18 six or eight in stock at this point.</p> <p>19 Q. Six to eight models or six to eight total?</p> <p>20 A. Six to eight total.</p> <p>21 Q. And what kind of weapons do these 22 suppressors -- what kind of weapons are they 23 compatible with? What are they made for?</p> <p>24 A. The ones we have right now are for .22 25 rifles, .22 long rifle.</p>	<p style="text-align: right;">Page 91</p> <p>1 mean, I've been -- I understand the question is 2 leading up to, have you made any money off of the 3 sales of -- in this company. But how is that 4 relevant to his income?</p> <p>5 MR. LEVENTHAL: I think that his 6 customers is relevant to determine the -- and also 7 to check out the -- the extent of his income and 8 the extent of his business.</p> <p>9 MR. SINCLAIR: Well, wouldn't that 10 be -- we haven't asked him how much his income 11 is -- or how much the business generated. How 12 would that not be disclosed in a tax return or 13 just as easily in something that wouldn't require 14 disclosure of customers.</p> <p>15 And I don't know the regulations 16 regarding the sale of firearms. But if there's a 17 regulation out there that says you can't disclose 18 this information that you put on file with the 19 ATF, I don't see any reason for us to even come 20 close to running a foul-up. We can get 21 information from income if that's your concern 22 from tax returns.</p> <p>23 Has -- have the -- this business, 24 Precision Defense Systems, Inc., has it filed tax 25 returns?</p>
<p style="text-align: right;">Page 90</p> <p>1 Q. When did you first start manufacturing 2 these?</p> <p>3 A. The first ones I made were about two or 4 three years ago. That's when I had gotten pretty 5 ill. We kept them in the safe and have not really 6 sold any until recently when my son began taking 7 over. He's starting to work to begin selling 8 those now.</p> <p>9 Q. Who are your customers?</p> <p>10 A. Various individuals.</p> <p>11 Q. And who are they?</p> <p>12 A. Those -- that is tax information that I am 13 not at liberty to discuss nor disclose under 14 federal law.</p> <p>15 Q. That is what did you say? Tax --</p> <p>16 A. It's tax information.</p> <p>17 MR. SINCLAIR: Wait a minute.</p> <p>18 MR. LEVENTHAL: Tax information.</p> <p>19 MR. SINCLAIR: Hang on a second. Was 20 the question who particularly are his customers?</p> <p>21 You want the names of his customers?</p> <p>22 MR. LEVENTHAL: Correct.</p> <p>23 MR. SINCLAIR: Okay. We are going to 24 object to the relevancy. And I don't know ATF 25 regulations. How is that relevant to income? I</p>	<p style="text-align: right;">Page 92</p> <p>1 THE WITNESS: No, we've made no 2 money.</p> <p>3 MR. SINCLAIR: Okay. When's the last 4 time you've filed a tax return for this thing?</p> <p>5 THE WITNESS: We have never made any 6 money, so --</p> <p>7 MR. SINCLAIR: Okay.</p> <p>8 THE WITNESS: We have not actually 9 been in business, and my accountant -- the 10 accountant that we were using for our family has 11 informed me that if your business isn't open and 12 you're not making sales --</p> <p>13 MR. SINCLAIR: Have you ever taken a 14 paycheck home from Precision Defense 15 Systems, Inc.?</p> <p>16 THE WITNESS: No, not a dime.</p> <p>17 MR. SINCLAIR: Okay. Have you ever 18 been paid in your role at Precision Defense 19 Systems, Inc. --</p> <p>20 THE WITNESS: No.</p> <p>21 MR. SINCLAIR: -- any sum of money?</p> <p>22 MR. LEVENTHAL: You can -- you can, 23 you know, redirect.</p> <p>24 BY MR. LEVENTHAL:</p> <p>25 Q. Do you know the names of your customers of</p>

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<p style="text-align: right;">Page 93</p> <p>1 this company?</p> <p>2 MR. SINCLAIR: Objection. I'm --</p> <p>3 BY MR. LEVENTHAL:</p> <p>4 Q. Yes or no, do you know the names of the</p> <p>5 customers?</p> <p>6 MR. SINCLAIR: You can take a pause.</p> <p>7 I get to speak. I'm going to object as to</p> <p>8 relevancy.</p> <p>9 And you know, if there's a federal</p> <p>10 regulation out there that governs your disclosure,</p> <p>11 I don't know it, but I'm going to instruct you to</p> <p>12 follow the federal regulations. I don't see how</p> <p>13 that's any way relevant. You can respond to the</p> <p>14 best of your ability to the gentleman's question.</p> <p>15 THE WITNESS: Again, there is a</p> <p>16 federal regulation from the Alcohol, Tobacco,</p> <p>17 Firearms, and Explosive division. Even the local</p> <p>18 police cannot come in and get those names.</p> <p>19 BY MR. LEVENTHAL:</p> <p>20 Q. My question is, do you know sitting here</p> <p>21 today, yes or no, who the customers are of your</p> <p>22 company?</p> <p>23 A. Today? No.</p> <p>24 Q. You don't know the names of any of your</p> <p>25 customers?</p>	<p style="text-align: right;">Page 95</p> <p>1 even sure of her name.</p> <p>2 Q. Did you speak with her?</p> <p>3 A. I have spoken to her once or twice when I</p> <p>4 go to pick up the returns. Generally I have to go</p> <p>5 and sign them, and I pick them up, and my wife</p> <p>6 generally pays the lady, the company, whatever. I</p> <p>7 pick up the returns and sign them and hand them</p> <p>8 over to the lady there. They file an electronic</p> <p>9 filing.</p> <p>10 Q. Did this woman tell you directly that this</p> <p>11 company didn't need to file tax returns?</p> <p>12 A. I asked her what I needed to do. I said,</p> <p>13 we're not actually in business. I said, we have a</p> <p>14 company name. I have a license. We're not in</p> <p>15 business. We're not making any money. We're not</p> <p>16 selling anything at this point.</p> <p>17 She said, well, technically your business</p> <p>18 is not in operation.</p> <p>19 I said, well, we've suspended that because</p> <p>20 of my illness, my inability to operate the</p> <p>21 equipment and machinery.</p> <p>22 Q. And now you have some inventory, correct?</p> <p>23 A. We do now, that's correct.</p> <p>24 Q. And you are about to sell some of that</p> <p>25 inventory?</p>
<p style="text-align: right;">Page 94</p> <p>1 A. No.</p> <p>2 Q. You're the president of the company?</p> <p>3 A. That's correct.</p> <p>4 Q. And who is your accountant?</p> <p>5 A. At this point in time, we have no</p> <p>6 accountant for the business because it's -- this</p> <p>7 will be the first year that it's actually</p> <p>8 functioned as a business.</p> <p>9 Q. Who is your personal accountant?</p> <p>10 A. H&R Block.</p> <p>11 Q. You just testified a few moments ago that</p> <p>12 your accountant told you you didn't need to file</p> <p>13 any tax returns for this company; is that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And what accountant told you that?</p> <p>16 A. The lady from H&R Block.</p> <p>17 Q. The lady from H&R Block? And H&R Block</p> <p>18 where?</p> <p>19 A. It's in Athens, Alabama.</p> <p>20 Q. And what is her name?</p> <p>21 A. I couldn't begin to tell you. I honestly</p> <p>22 don't know.</p> <p>23 Q. Did this lady help you with your personal</p> <p>24 tax returns?</p> <p>25 A. Yes. My wife deals with her, and I'm not</p>	<p style="text-align: right;">Page 96</p> <p>1 A. Yes.</p> <p>2 Q. And your plans are to -- what are your</p> <p>3 plans for the business?</p> <p>4 A. Hoping that it will be successful and my</p> <p>5 son can take it completely over and move forward</p> <p>6 with it.</p> <p>7 Q. Okay. By the way, why didn't you mention</p> <p>8 this business when your counsel was asking you</p> <p>9 about your various sources of income and hobbies?</p> <p>10 A. Well, it's not an income producing --</p> <p>11 MR. SINCLAIR: Objection. I don't</p> <p>12 believe that's a correct characterization of my</p> <p>13 question. I don't believe I asked him about</p> <p>14 hobbies.</p> <p>15 But you can go ahead and answer the</p> <p>16 gentleman's question to the best of your ability.</p> <p>17 THE WITNESS: Again, it's just a</p> <p>18 hobby. It's -- to do it legally and without</p> <p>19 repercussions and problems with the Alcohol,</p> <p>20 Tobacco, and Firearms division, I have to have</p> <p>21 licenses. And to have a license, you have to have</p> <p>22 a corporate name or a company name, and I didn't</p> <p>23 want to bump heads with the federal government.</p> <p>24 BY MR. LEVENTHAL:</p> <p>25 Q. Okay. So your testimony is it's just a</p>

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<p>1 hobby?</p> <p>2 A. Yes, sir, at this point, it has been a</p> <p>3 hobby. I'm hoping that my son can now take it</p> <p>4 over and make a living at it. I'm going to allow</p> <p>5 him to have it, and -- I can't do it anymore; I</p> <p>6 can't even as a hobby.</p> <p>7 Q. Right. What about -- you mentioned drag</p> <p>8 racing earlier in your deposition?</p> <p>9 A. Yes, sir.</p> <p>10 Q. What was that? Was that a career or a</p> <p>11 hobby?</p> <p>12 A. It was a hobby back in the '60s. I did it</p> <p>13 beginning in about '65, '66, somewhere in that</p> <p>14 neighborhood, and did it for about 13 years. And</p> <p>15 I was getting divorced. My partner and I both</p> <p>16 were getting divorced at the same time. We sold</p> <p>17 all of the equipment with the exception of one</p> <p>18 vehicle, and I never raced again.</p> <p>19 Q. What does M Gun Tony mean?</p> <p>20 A. That's my name on the Internet. It's</p> <p>21 Machine Gun Tony.</p> <p>22 Q. Machine Gun Tony, is that a nickname</p> <p>23 you've had?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And how long have you had that nickname?</p>	<p>1 since back in the early/mid '90s.</p> <p>2 Q. Since the early to mid '90s? I thought</p> <p>3 you just testified that the state trooper gave you</p> <p>4 this nickname is 2000 or 2001?</p> <p>5 A. No, sir.</p> <p>6 Q. When did you say you first got the</p> <p>7 Machine Gun Tony nickname?</p> <p>8 A. I can't remember the exact date or the</p> <p>9 exact year. Jay and I had known each other for a</p> <p>10 number of years, and he stopped me on the</p> <p>11 inter- -- on the highway one afternoon, and we</p> <p>12 were all laughing. And he said, if it's not</p> <p>13 Machine Gun Tony. He stopped me to chitchat.</p> <p>14 Q. And when was that? What year</p> <p>15 approximately?</p> <p>16 A. I honestly don't recall.</p> <p>17 Q. Was this in the '90s or --</p> <p>18 A. It was in the '90s, yes.</p> <p>19 Q. And it was after that that you adopted the</p> <p>20 Internet --</p> <p>21 A. That's correct.</p> <p>22 Q. -- mguntony.com -- or at Yahoo.com, right?</p> <p>23 A. Many folks referred to me as Machine Gun</p> <p>24 Tony prior to that, and that's -- I just went</p> <p>25 ahead and went with the M Gun Tony because that's</p>
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<p>1 A. Oh, gosh, since -- back in, I guess,</p> <p>2 '90, '91, '92. I have had an interest in weaponry</p> <p>3 all my life, especially automatic weaponry.</p> <p>4 Q. Now, did you get that nickname in</p> <p>5 connection with this company we were discussing,</p> <p>6 Precision Defense Systems?</p> <p>7 A. No, sir.</p> <p>8 Q. How did you get that nickname?</p> <p>9 A. The nickname was given to me by a member</p> <p>10 of the Alabama state troopers.</p> <p>11 Q. Who was that?</p> <p>12 A. His name is Jay -- I can't remember his</p> <p>13 last name. His first name is Jay.</p> <p>14 Q. Where is he based?</p> <p>15 A. He's in the north Alabama area.</p> <p>16 Q. Is he in Athens?</p> <p>17 A. He lives in the Athens area, yes, sir, he</p> <p>18 and his wife do.</p> <p>19 Q. Now M Gun Tony is also your Internet</p> <p>20 e-mail address?</p> <p>21 A. Yes, it is.</p> <p>22 Q. What is that e-mail address?</p> <p>23 A. It's Mguntony@yahoo.com.</p> <p>24 Q. And how long have you had that?</p> <p>25 A. Again, I think I have had that account</p>	<p>1 what everybody across the country and around the</p> <p>2 world knew me as.</p> <p>3 Q. Now, have you had any other businesses</p> <p>4 relating to firearms?</p> <p>5 A. I at one time had a federal firearms</p> <p>6 license. Again, it was a hobby. And to buy and</p> <p>7 sell guns, trade, I have had to have a federal</p> <p>8 license, and that was back in the '80s.</p> <p>9 Q. Since 1999, have you earned any income</p> <p>10 from the sale of handguns or firearms?</p> <p>11 A. No.</p> <p>12 Q. What was the name of the car dealership</p> <p>13 that you said you worked at in -- was it Pulaski,</p> <p>14 Tennessee?</p> <p>15 A. Yes. It was Elliott Popham. He has</p> <p>16 subsequently gone bankrupt.</p> <p>17 Q. When did he go bankrupt?</p> <p>18 A. About one or two years ago.</p> <p>19 Q. Who was your supervisor there?</p> <p>20 A. Oh, we had so many. During the time frame</p> <p>21 that I was there, there were four or five</p> <p>22 different service managers.</p> <p>23 Q. Let me ask you about this policy. Did an</p> <p>24 agent come on to the business premises to sell the</p> <p>25 policy?</p>

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<p style="text-align: right;">Page 101</p> <p>1 A. Yes, he came to my place of employment and 2 spoke to me.</p> <p>3 Q. And who -- who authorized that?</p> <p>4 A. To my knowledge, no one did. He didn't 5 have to have it. He came in and talked to me. We 6 had talked before because I had met him before. 7 And he said he had this policy, and I said I would 8 like to look at it.</p> <p>9 And he came in at some point, and I took a 10 break, and we talked about it.</p> <p>11 Q. So you're saying that none of the 12 supervisors had to authorize him to come onto the 13 premises?</p> <p>14 A. No.</p> <p>15 Q. And did he talk to any of the other 16 employees, or was it just to you?</p> <p>17 A. I'm sure he talked to some of the others 18 as well. There were six or eight of us employees 19 there.</p> <p>20 Q. And who else bought one of these cancer 21 policies?</p> <p>22 A. That, I do not. I couldn't begin to 23 remember to tell you.</p> <p>24 Q. Do you remember talking about the policy 25 with any of the other employees there?</p>	<p style="text-align: right;">Page 103</p> <p>1 A. Yes.</p> <p>2 Q. And there seem to be two different people 3 listed there.</p> <p>4 A. Uh-huh.</p> <p>5 Q. The second one seems to be a Gene. Do you 6 recall a Gene?</p> <p>7 A. No, I don't recall ever meeting Gene.</p> <p>8 Q. And you believe the person you spoke to 9 was Jerry?</p> <p>10 A. That is correct.</p> <p>11 Q. Any idea why it says 50 percent to the 12 first and 50 percent to a second representative?</p> <p>13 A. No idea whatsoever.</p> <p>14 Q. When's the last time you spoke to Jerry?</p> <p>15 A. It's been a few years ago. I would say 16 probably 2000.</p> <p>17 Q. And what did you talk about in 2000?</p> <p>18 A. We were discussing the -- my claims and 19 the policy and so forth. He had come to work -- 20 at that point, he was working for Mr. Popham as a 21 sales rep as well.</p> <p>22 Q. Was he selling cars?</p> <p>23 A. Yes, he was.</p> <p>24 Q. So that was approximately seven years ago?</p> <p>25 A. Yes, sir.</p>
<p style="text-align: right;">Page 102</p> <p>1 A. Yes.</p> <p>2 Q. Who?</p> <p>3 A. The -- the other fellows that were there, 4 there was a young man that was -- that worked next 5 to me, we discussed it. And he felt that being a 6 young guy he didn't need that.</p> <p>7 And I'm trying to remember his name. I 8 want to say his name was Chris. Several of the 9 others that were there -- and, again, like I said, 10 there were only five, maybe six employees that 11 were actually in the technician end of the service 12 department.</p> <p>13 Q. And what was the name of the agent you 14 talked to?</p> <p>15 A. Jerry -- and I honestly don't remember his 16 last name.</p> <p>17 Q. Now, let's take a look at this Exhibit 4, 18 Page 36 of 38.</p> <p>19 A. Okay.</p> <p>20 Q. Is that your signature at the bottom 21 portion of that page?</p> <p>22 A. Signature of owner/applicant? Yes, sir, 23 it is.</p> <p>24 Q. Okay. Now, do you see below that it says, 25 "Signature of licensed representative"?</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. And how did that conversation come about?</p> <p>2 A. If I recall correctly, I had gone up there 3 to visit after I had started my chemo, and he was 4 there. And I told him that -- he asked how things 5 were going, and I told him that things were going 6 fine, and the policy was paying. It had been an 7 excellent investment.</p> <p>8 Q. Where is Jerry today?</p> <p>9 A. I have no idea. I know when the 10 dealership went bankrupt, everybody went different 11 directions.</p> <p>12 Q. What else can you tell me about that 13 conversation with Jerry in the year 2000?</p> <p>14 A. I think that was about it. It was just 15 a -- a short and brief conversation.</p> <p>16 Q. Let's go back to the year 1997 when you 17 purchased this policy. First of all, tell me, 18 when was the first time that you had any 19 discussion with an agent or sales representative 20 of Life Investors about this cancer insurance 21 policy?</p> <p>22 A. It was approximately this time listed 23 here, November -- I would say October/November 24 of '97.</p> <p>25 Q. And that conversation was -- was with who?</p>

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